FRAMEWORK FOR ACTION AGAINST FAMILY VIOLENCE

2001 REVIEW

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SUMMARY

In 1995, the Framework for Action Against Family Violence was introduced in Nova Scotia. Following the Framework's introduction, a set of integrated policies and procedures for responding to family violence were developed for all components of the justice system.

In February, 2000, the deaths of Lori Lee Maxwell and Bruce Allan George, and the subsequent review of how their case was handled, prompted the Minister of Justice to ask Dawn Russell, Dean of Dalhousie University Law School, and Diana Ginn, Assistant Professor of Law, to conduct the present review of the Framework for Action Against Family Violence.

The terms of reference for this review were that the reviewers were to assess the current level of support for the Framework among justice workers in the province, and to assess how the policy is currently being implemented in practice. The terms of reference for the review required that there be a review of justice system approaches to intimate partner violence in other Canadian provinces and territories, a review of literature on the subject, and meetings with focus groups comprised of stakeholders from around the province.

The outcome of this review was that, while there are divergent views on the issues and complexities associated with the subject of intimate partner violence, there is strong support among justice workers in Nova Scotia for the Framework for Action Against Family Violence. There were recommendations for how the Framework could be strengthened, made more flexible, and more responsive to the needs of all persons affected by intimate partner violence. However, despite variance among those who contributed to the review, there was consensus that the Framework was a very positive step in dealing effectively with intimate partner violence.

Thus, while this review contains suggestions as to how to better implement the Framework, the Framework itself is sound and should remain in place.

Conclusions and Recommendations

1.0 Police

While there is widespread support among police for the pro-charge, pro-arrest, pro-prosecution policy embodied in the Framework, there are significant inconsistencies and some difficulties with the interpretation and application of Framework policies and procedures by the police. The inconsistencies include: the failure of some police to appreciate or to accept the obligation to assess reasonable and probable grounds; wide differences in attitude and approach to victims; variations in the quality of investigations conducted (especially in the taking of photographs and of videotaped statements); a notable increase in cross-charging; and variations in the wording of no-contact provisions, in the circumstances in which peace bonds are recommended, and in the practice of informing the victim about the interim release of the accused. As well, there appears to be uncertainty as to how to deal with difficult cases and reluctance to use the criminal harassment provisions of the *Criminal Code*. Police themselves are aware of many of these inconsistencies and difficulties. Police, and focus group participants from other justice sectors and from community organizations, suggested that training would help
1.1 to eliminate many of these problems. **It is therefore recommended that Nova Scotia develop a strategy for delivering an ongoing training program for police and other justice workers,**

using and building on the successful training done immediately following the implementation of the Framework. The training should address all of the issues dealt with in the original training program and the inconsistencies and difficulties identified above. Participants from all justice sectors and from community organizations should be involved in its development and delivery.

1.2 **Given the importance of good evidence-gathering practices to the successful prosecution of domestic violence cases and the benefits achieved in some jurisdictions through the use of specialized investigative units, it is recommended that in metropolitan areas where the number of domestic violence incidents reported annually justifies it and the size of the police force permits it, RCMP sub-divisions and municipal police forces dedicate resources to the establishment of a specialized domestic violence investigative unit. It is also recommended that a process or mechanism be established for each municipality in the Province to do the thorough investigation and follow-up required in difficult cases. This mechanism might include a single specialized domestic violence police investigator within each municipality or, in the case of smaller municipalities, a special domestic violence investigator shared between adjoining municipalities. Each municipality should also have within its police force a crime prevention victims' services coordinator.**

Frustration was expressed by both victims and police in cases where there are multiple, conflicting orders governing the existence of a family. Such orders often include a Family Court order allowing an accused access to children and a conflicting peace bond or order for interim release containing a no-contact provision. Conflicting orders of this kind pose a problem for police in determining how to respond to a breach of the peace bond or
1.3 no contact provision. **It is recommended that this issue of conflicting orders be referred by the Minister of Justice to the Chief Judge of the Provincial Court, to the Chief Justice of the Supreme Court, and to the Chief Judge of the Family Court for consideration.** It may be that the solution is to ensure that Justices of the Peace and Provincial Court Judges make it a routine practice to inquire as to the existence of a Family Court order allowing the accused access to the children, and for Family Court judges to routinely inquire as to the existence of a peace bond or no-contact provision, and for judges of each court to tailor their own orders accordingly. In cases where there is a pre-existing Family Court order for access, for example, the no-contact provision could perhaps provide "no-contact except with another person present for the purpose of arranging access to children."

1.4 **In light of the uncertainty expressed by police officers as to how to deal with "he said, she said" situations, the concern expressed by victims and community organizations about the increase in cross-charging, and the unique procedural and evidentiary concerns posed by such cases, it is recommended that police seek legal advice from Crown prosecutors in difficult cases. It is also recommended that consideration be given to the adoption of a primary aggressor policy requiring officers to determine and arrest the primary aggressor in the incident, thus reducing the likelihood of cross-charges.**

Victims are not always being informed about the release of the alleged perpetrator and
1.5 about the release conditions. **It is therefore recommended that police procedures within each department or detachment be reviewed to ensure that both victims and Victims' Services are informed regarding interim release.**

Both municipal police and RCMP take their monitoring and audit responsibilities seriously. However, a couple of areas were identified for improvement. One of the problems identified by the Police and Public Safety Services Division of the Department of Justice in its audits is in carry through from the individual domestic violence incident to the larger case file. It is important that this carry through process be overseen by the case supervisor responsible for noting discrepancies in record keeping and in compliance with the Framework. As well, victims, Victims' Service representatives, members of the Nova Scotia Advisory Council on the Status of Women, and representatives from the Police and Public Safety Services Division all noted that in police practice, domestic disputes are treated quite separately from domestic
1.6 violence calls. **It is recommended that police document domestic dispute calls as carefully as they document intimate partner violence incidents, since both are a critical part of the history of family violence in a particular case.**

2.0 Crown Attorneys

One theme runs throughout the results of consultations by the 1999 Department of Justice Monitoring Committee and the focus group discussions in the current review: that there has been inconsistent acceptance among Crowns of the philosophy underlying the Framework for Action. While there may be difficulties inherent in carrying out a pro-prosecution policy in the context of intimate partner violence, some Crowns see the Framework as representing the most appropriate response to such violence, and characterize the difficulties as stemming largely from the complexities of intimate partner violence itself, inadequate implementation of the Framework (for instance, police failing to gather available independent evidence) or inadequate resources (for instance lack of court orientation and accompaniment for victims). Other Crowns see difficulties in implementing the Framework as highlighting flaws inherent in any pro-prosecution policy, and as revealing the need for greater flexibility in such policies.

2.1 **It is recommended that the primary justice system response to intimate partner violence should be to treat it for what it is: criminal activity deserving of sanctions from the criminal justice system. Furthermore, it is recognized that simply allowing wishes expressed by the victim to dictate whether or not a particular charge proceeds would be a retrograde step, providing perpetrators with an opportunity to coerce victims into asking for stays. Thus, even if some flexibility might be introduced (as discussed below in the portion on diversion), a pro-charge, pro-prosecution philosophy should remain the cornerstone of the Framework. The goal must then be to translate this philosophy into securing convictions where a crime has occurred, and enhancing victim satisfaction with the process.**

2.2 **It is recommended therefore that ongoing training be implemented to make certain that all Crowns**

- **understand the dynamics of intimate partner violence and the reasoning behind a pro-prosecution policy;**
- **give priority to cases involving intimate partner violence, in terms of asking for early court dates;**
- **become versed in using independent evidence (where available) so as to reduce reliance on victim testimony;**

- **recognize the importance of ascertaining from victims, and, as far as possible, introducing as evidence in court, information regarding past incidents of violence. It is hoped that such evidence, in conjunction with statistical information on the extent to which victims generally experience repeated acts of violence before calling the police, might assist the court in recognizing that a first charge rarely represents an isolated incident;**
- **follow Public Prosecution guidelines intended to reduce the stay rate of charges involving intimate partner violence; and**
- **appreciate the importance of close liaison with Victims' Services.**

2.3 **It is also recommended that sufficient resources be allocated to the Public Prosecution Service to allow Crowns to carry out the steps required for effective prosecution of charges involving intimate partner violence.**

2.4 **It is furthermore recommended with regard to implementing the current Framework that the Public Prosecution Service complete its internal audit of intimate partner violence files and put in place a system for on-going monitoring, to ensure that Crown treatment of such files is in keeping with Framework policies.**

In several Canadian jurisdictions, domestic violence cases which meet certain criteria may be referred to a diversion program. Other provinces, including Nova Scotia, explicitly exclude cases involving intimate partner violence from those eligible to be considered for diversion or "alternate measures." Some of the recent literature suggests that a pro-prosecution policy, amplified by diversion in certain limited circumstances, may provide a partial answer to the dilemma of attempting to treat intimate partner violence like the crime it is, while at the same time affording some recognition of autonomy for victims who do not wish to follow through with the criminal justice process. This issue also arose in a number of the focus groups, with some participants strongly advocating adding a diversion component to the Framework, others as adamantly opposed to such a move, and others seeing both sides.

It seems that there are risks either way. Handling some cases of intimate partner violence other than through the standard criminal justice process allows for the possibility that victims will be increasingly disempowered. It could become too easy for the government to avoid allocating the resources needed for full implementation of the Framework, or for Crowns who have an overload of cases, or who have never fully "bought into" the Framework philosophy, to shunt files into the diversion process at the least hint of a victim's reluctance to proceed. Further, because there has never been complete implementation of the Framework, in terms of on-going training for justice personnel or sufficient victim support, it is arguable that we do not actually know the optimal results that could be gained from a pro-charge, pro-prosecution policy supported by extensive victims' services.

On the other hand, there does seem to be some logic to the argument that, given the complexities of intimate partner violence and the various choices that victims may wish to make, it is unlikely that any one policy could serve the needs of all victims. Thus, it may be that a rigid adherence to a pro-prosecution policy risks disempowering the victim in instances where a victim has come to an informed, voluntary conclusion that prosecution will not assist her in
2.5 achieving the goals she has identified for herself. **It is recommended therefore that the Department of Justice initiate a diversion pilot project for intimate partner violence, at one**

site in the province. Such diversion should only be available after a charge has been laid. It is further recommended that the decision to refer an offender to diversion should be made by the Crown, in conjunction with the officer who laid the charge, and "[o]nce a referral has been made the head administrator of the program should be able to request that the Public Prosecution Service reconsider a recommendation." Those who entered the diversion program would enter into an agreement that presumably would include terms such as a promise to refrain from further violence and an agreement to undergo counselling relevant to intimate partner violence, as well as other counselling (such as for substance abuse) as needed in individual cases. Failure to adhere to the diversion agreement would result in the case being returned to the standard prosecution stream. If this model were followed, a decision would still need to be made as to whether or not successful compliance with the diversion agreement would still lead to a criminal record (with the compliance taken into account in sentencing).

2.6 **In order for a diversion pilot project to avoid undermining what gains have been achieved thus far through the Framework, it is recommended that such an initiative should be undertaken in accordance with the following guidelines:**

- **introduction of a pilot project would be in addition to, rather than in place of, a firm government commitment to allocating sufficient funding to allow effective implementation of the Framework;**

- **the site for the pilot project should be chosen carefully. Diversion should only be initiated in a region where there is already strong support for the pro-charge, pro-prosecution philosophy of the Framework, and where it seems likely that justice personnel and the community could work closely together in providing appropriate treatment and monitoring for the perpetrator and support for the victim. Acceptance of the Framework philosophy seems to vary from region to region. While Cape Breton is not the only region to demonstrate firm commitment, it seems to be unique in its combination of commitment to the Framework and superb relationships among those who work with issues relating to intimate partner violence, whether within the justice system or within the community. It is recommended therefore that Cape Breton would be the logical place to introduce a pilot project on diversion;**

- **the pilot project would have to receive sufficient funding for an adequate organizational structure, and enough counselling/treatment programs would have to be in place for referral of perpetrators going through diversion;**

- **the pilot project would have to be monitored, and measured against stated goals, in order to determine whether the use of diversion should be expanded to other sites;**

- **critical aspects of developing a pilot project would include developing appropriate criteria for assessing which cases might be considered for diversion, training Crowns involved with the project in the consistent application of those criteria, and training victims' support workers to assist victims in making voluntary and**

informed choices between diversion and the standard prosecution of offences. In developing criteria, close attention should be paid to those jurisdictions that are already using diversion in the context of intimate partner violence, and any evidence from those jurisdictions as to the appropriateness of the criteria in place;

- **at a minimum, the following criteria should be met before a case involving intimate partner violence would be considered for diversion: the offender has no prior conviction or discharges for offences involving violence or threats; no criminal convictions of any kind for the proceeding 5 years; no outstanding criminal charges; and no previous referrals to diversion for charges involving intimate partner violence; no bodily harm was inflicted on the victim; the victim, after independent counselling, agrees to the use of diversion; and the offender takes responsibility for his actions, has consented to the use of diversion, and is cooperative; and**

- **an on-going Public Prosecution Service commitment to training would be required, to ensure that all Crown Attorneys are well aware of the goals and philosophy of the Framework for Action and well aware of the dynamics of intimate partner violence.**

A number of jurisdictions in Canada and the United States now have specialized courts for cases involving intimate partner violence. While the details of such courts differ, it seems that most involve the use of specially trained prosecutors and judges, and a victims' support component.

Even in communities where a fully specialized court with separate staff may not be possible, several jurisdictions are attempting to develop feasible options. For instance, in Ontario, domestic violence courts are being established in larger municipalities, while in smaller communities the focus will be on providing specialized training for designated Crowns and victims' support workers, and a specialized process to expedite cases. As noted above, in the Yukon Territory, a half day of court each week is set aside to deal with intimate partner violence cases on an expedited basis.

The Women Abuse Council of Toronto conducted a court watch study (1999) and reported that specialized courts are more successful in prosecuting domestic violence cases; have a lower rate of withdrawals, dismissals, and peace bonds; result in a higher rate of guilty dispositions (both guilty pleas and verdicts in court); and have a higher rate of victims appearing in court. According to the 1999 court watch study, specialized domestic courts are more effective than the standard criminal justice court in the prosecution of intimate partner violence.

Given the extent to which focus group discussion stressed the need for ongoing training, and consistency of approach, in order to ensure effective implementation of the Framework, it seems logical that a specialized court, with specially trained Crowns, judges and victims' support workers, would be better able to provide continuity and knowledgeable application of Framework policies. On the other hand, proposals for specialized courts must take account of differences between larger urban centres and small towns or rural areas. Presumably a fully specialized court could be more easily introduced where court sits each day, there are a number of Crowns and judges involved, and a higher number of cases involving intimate partner violence, than in an area where court sits less frequently and fewer personnel are involved.

2.7 **It is therefore recommend that the Department of Justice undertake detailed study of the organization and operation of specialized domestic violence courts in other jurisdictions and then initiate a specialized domestic violence court as a pilot project in the Halifax Regional Municipality. This pilot project should be carefully monitored, and its performance measured against stated goals such as expediting the court process; increasing victim cooperation and reducing stay rates; prosecuting charges involving intimate partner more effectively; providing better support for victims throughout the process; and assessing appropriate sentences. If the pilot project shows that a specialized court is better able to meet these goals than the present system, it is recommended that the Department of Justice expand such specialization to those sites throughout the province where the incidence of intimate partner violence cases, and the numbers of court personnel would make this feasible.**

2.8 **It is also recommended that for communities too small to warrant a fully specialized court, the Department of Justice implement measures to provide some degree of specialization within the current system. Such measures might include setting aside some court time weekly to provide for expedited hearings, and providing designated Crowns and victims' support workers with more extensive training. It is recommended that, in designing specialization measures, the Department of Justice should seek guidance as to what does or does not work from other jurisdictions which are already experimenting in this area.**

As is the case with the present court system, it seems likely that a major factor in the success of specialized courts or specialized processes would be the provision of adequate victim support. Without such services, attempts at specialization could well founder.

3.0 Courts

Despite the Framework requirements and the recommendations of the 1999 Evaluation Report, Justices of the Peace still have not received training regarding the Framework. Delays are still a significant problem in the prosecution of spousal/partner violence cases, these cases are not being given priority in the justice system, and there continues to be widespread concern about the perceived leniency in sentencing, about low rates of incarceration, and about some
3.1 inappropriate program referrals in conditions of probation. **It is therefore recommended that, in view of the important role played by Justices of the Peace, they receive training to make them aware of their responsibilities and accountability under the Framework.**

3.2 **It is further recommended that the Minister of Justice bring this report to the attention of the Chief Justice of Nova Scotia, the Chief Justice of the Supreme Court, and the Chief Judge of the Provincial Court to solicit their support for the expeditious processing of domestic violence cases; to re-emphasize the need for denunciation and deterrence in sentencing of perpetrators of family violence; to make them aware of widespread concerns about the need for sensitization of the judiciary concerning the dynamics of domestic violence, and its impact on victims; and to alert them to the need for increased awareness of the types of treatment appropriate for perpetrators of domestic violence, as well as of the availability of such programs, or lack thereof, throughout the**

Province.

3.3 **It is recommended that a risk assessment and management tool be developed for use by police, Crown Attorneys, and Corrections staff to identify those perpetrators who pose a higher level of risk than others, so as to assess and manage risk to victims, to assist in decisions in relation to bail and sentencing, and to prioritize allocation of scarce probation supervision and treatment resources.**

3.4 **It is also recommended that the Department of Justice implement the prototype information system it developed in 1996 to collect data on an ongoing basis to track the performance of the justice system in response to family violence cases in order to support sound executive decision-making and to measure the impact of new initiatives.**

4.0 Corrections Services

Given that probation is frequently used as a sentence for crimes involving intimate partner violence, it seems particularly important that probation orders be structured, monitored and enforced so as to provide as much protection as possible for victims, and as much deterrence as possible for perpetrators. The question of whether probation should be used in a particular case, and what conditions should be attached, and the question of the appropriate sentence to be imposed for breaches of probation relate to issues raised above in the discussion of courts. However, issues of supervision and victim notification fall within the purview of Corrections Services.

Focus group discussion of Corrections Services centred on the lack of adequate monitoring due to excessive caseloads for probation officers and, to some extent, inconsistencies in the application of the Framework. This discussion would seem to highlight issues of resources and training.

4.1 **It is recommended, therefore, that Corrections Services receive adequate funding so as to reduce caseloads to the point that probation officers can realistically be expected to implement the Framework requirements of supervision and notification.** Implementation would include liaison with victims in terms of preparation of pre-sentence reports and discussion of safety plans; informing victims of the terms of probation orders or the date of release where a perpetrator has received a custodial sentence; close monitoring of perpetrator compliance with conditions attached to probation orders; and immediate notification of Crowns and Victims' Services when violations occur. 4.2 **It is further recommended that Corrections Services staff receive training on the effective and consistent application of the Framework. Finally, it is recommended that procedures be put in place to flag all files involving intimate partner violence, so that Corrections Services can apply Framework policies.**

5.0 Victims' Services

The literature on intimate partner violence, the results of the interjurisdictional survey, and the insights provided by focus group participants all indicate that there are a range of services needed in order to provide support for victims. These would include: immediate crisis intervention at the time violence occurs; crisis housing for those victims who do not feel safe remaining in their own homes; where charges are laid, information regarding the progress of the file through the justice system, as well as court orientation and accompaniment, counselling and advocacy; and assistance for women wishing to access other community services.

The available evidence suggests that adequate victim support is essential not only for helping victims and their families deal with the experience of intimate partner violence, but also to ensure effective implementation of a pro-charge, pro-prosecution policy. In fact, it would seem that a lack of victim support can almost guarantee higher rates of reluctant witnesses and mutual Crown/victim disenchantment, which in turn undermine the possibility of an effective criminal justice response to intimate partner violence. Even if a pilot project on diversion were to be introduced, as is discussed in the section on Crowns, victims' services would be equally essential for that model; along with objective criteria regarding the extent of the violence, past offences, etc., a case would be considered appropriate for diversion only if the victim were in full agreement. Victims would require counselling and support to ensure that such agreement was voluntary and informed.

It also appears evident that effective victim support requires collaboration within government, among various community organizations, and between government and communities.

5.1 **Therefore, it is recommended that the Department of Justice enter into discussions with those within the Department charged with implementation of the Framework, other government departments, and the community, in order to determine the most appropriate and efficient ways of delivering the services needed for full victim support, and it is recommended that the government commit sufficient funding to allow for such delivery.** It would appear that an entity such as the Family Violence Prevention Initiative would be instrumental in facilitating the necessary discussions, and then ensuring that the services provided did in fact work together to provide comprehensive victim support. **It is therefore recommended that the Family Violence Prevention Initiative be reinstated.** 5.2

6.0 Training

The 1999 Evaluation Report identified training as the most important critical success factor in the implementation of the Framework. The need for training for new recruits and providing a refresher and updates to existing staff in all justice sectors was identified by an overwhelming majority of focus group participants during the current review. As well, all other jurisdictions have identified ongoing training as essential to the successful implementation of a pro-charge, pro-arrest, pro-prosecution policy. **It is therefore recommended that Nova Scotia develop and implement ongoing training for all justice sectors, building on the initial success of the train-the-trainer model used following the implementation of the Framework, involving community agencies early on in both the development and delivery.** Ongoing training will help to eliminate inconsistencies in practice, will provide justice workers and community agencies with the opportunity to identify and deal with concerns as they arise, and will help to foster interagency cooperation. 6.1

6.2 **In light of the widespread and serious concerns expressed about the need of the judiciary for training on domestic violence, it is also recommended that the Minister of Justice bring this report to the attention of the Chief Judge of the Provincial Court, the Chief Judge of the Family Court, the Chief Justice of the Supreme Court, and the Chief Justice of the Province, and to the attention of the National Judicial Institute, which**

provides educational programming for the judiciary across Canada.

7.0 Accountability

Auditing, monitoring and accountability mechanisms are important in order to assess the effectiveness of the Framework and to ensure compliance. The 1999 Evaluation Report found that while police agencies and the Victims' Services Division of the Department of Justice had accepted their responsibility by establishing internal audit systems, no ongoing monitoring process had been implemented by the Public Prosecution Service, Courts, or Correctional Services. That remains true today. As well, the FVPI, which was to serve as the repository for family violence outcome measures generated by all departments, has been eliminated and the data collection process undertaken in April 1996 and completed in August 1998 to track progress through the justice system has not been repeated. In Nova Scotia and elsewhere, monitoring efforts have been hampered by the absence of integrated justice information system

7.1 **It is recommended that the Minister of Justice require the Public Prosecution Service, Courts and Registries, and Correctional Services to formally restate their commitment to the Framework for Action Against Family Violence and require them, within six months of their restatement, to articulate the means by which they will monitor adherence to the Framework.**

8.0 Interagency Cooperation

The 1999 Evaluation Report recognized that government had an important leadership role to play and recommended that the Deputies' Committee on Social Policy reconfirm the mandate of the Family Violence Prevention Initiative and establish the necessary accountability framework. Virtually all focus group participants in the current review acknowledged the very valuable role the FVPI had played in facilitating and supporting interagency cooperation and expressed serious concern about the elimination of it in the 2000 Provincial budget.

Other Canadian jurisdictions have recognized that coordination must take place at all levels to be effective and that it takes staff and a commitment of resources to do the work, as
8.1 well as leadership and support at the highest level. **It is recommended that the Province support and strengthen, with senior level commitment, the coordination of family violence activities, within and external to the Department of Justice, involving both government and community stakeholders.** This initiative should build on the partnerships created by the Family Violence Prevention Initiative and the commitment of the Interagency Committees on Family Violence around the Province, as well as the efforts of those involved in the initial implementation and training under the Framework.

Confidentiality concerns, cultural differences, and the resulting refusal to share vital information pose significant obstacles to ensuring a comprehensive, co-ordinated response to complex and difficult cases involving various justice sectors, community agencies, and the
8.2 Department of Community Services. **It is therefore recommended that existing interagency protocols among police, child welfare, transition houses, Corrections and men's treatment programs be reviewed and that, where required, new interagency protocols be developed and confidentiality agreements concluded to facilitate the sharing of information necessary**

to protect and support victims and their children. Priority should be given to reviewing, revising and reinforcing protocols in place between child protection and police to improve information sharing, case planning and coordination.

Focus group participants and respondents from other jurisdictions stressed that battered women are deterred from coming forward and seeking assistance when they realize that s. 22(2)(i) of the *Children and Family Services Act*, or its equivalent in other jurisdictions, and protocols specific to the reporting of children who witness domestic violence, expose them to the risk of having their children taken away. It is important to find ways to minimize this disincentive and to maximize remedial resources available to both women and children, so as to prevent them from remaining trapped in violent families. 8.3 **It is therefore recommended that, as in Ontario and in several jurisdictions in the United States, specialists in child protection and in domestic violence be brought together to exchange information, to provide cross-training, and to develop protocols for case handling and service provision.**

9.0 Gaps

The whole area of programs for children exposed to family violence is extremely under-funded. In Nova Scotia there are no formal programs. Yet there is increasing recognition that such programs are a key to preventing and reducing domestic violence. Some jurisdictions such as Ontario and British Columbia have begun to invest heavily in this area. 9.1 **It is recommended that Nova Scotia invest in the development of programs for children exposed to family violence, involving both groups and individual counselling for children and youth to address recovering from trauma and learning new, non-violent conflict resolution skills, as well as to address the needs of those exhibiting aggressive behaviour themselves at home or in school.** These programs should be accompanied by a complementary program for mothers/non-violent parents to learn about the impact of the violence on their children, coping methods, and parenting skills which support what the children are learning, along with safety planning. These programs are perhaps our most promising chance to reduce family violence by preventing the intergenerational cycle of violent behaviour.

The most common disposition in domestic violence cases in Nova Scotia is probation and the use of conditions for referral to spousal abuse treatment programs has increased significantly since the implementation of the Framework. There is substantial empirical evidence to suggest that treatment does reduce recidivism. Those Canadian jurisdictions with a renewed justice strategy are investing heavily in these programs. However, focus group participants emphasized that resources for men's intervention and treatment programs in NovaScotia are inadequate. 9.2 **It is therefore recommended that Nova Scotia invest in the expansion of programs for assaultive partners to provide intervention/treatment based on a set of common standards as a measure to prevent the violence from recurring.**

9.3 **The reluctance of victims living in Aboriginal communities and from visible minorities to report spousal or partner violence was noted in the 1999 Evaluation Report and again by focus group participants during the current review. It is important for justice workers to be aware of this reluctance and of the reasons for it. It is therefore recommended that this issue be addressed in the training program developed for justice workers.**

9.4 **Victims of perpetrators from Aboriginal communities and racial minorities sometimes feel that reporting their batterers to police is a breach of loyalty to their community and are also concerned that reporting their batterers will contribute to racial/cultural stereotyping. Such concerns may be alleviated, in part, by increased reliance on evidence other than victim testimony. It is recommended that this be done wherever possible.**

9.5 **As well, insofar as evidence suggests that advocacy services can assist victims in finding the strength to escape domestic violence on their own and can help to amplify their voices to enable prosecution policies to be applied in a way that meets the needs of particular victims, it is recommended that Nova Scotia invest in expansion of support services for abused women, including advocacy services to provide outreach and support for women from Aboriginal communities and visible minorities.**

10.0 Public Education

Given that the ultimate goals of any policy on intimate partner violence must encompass not only efforts to provide an effective justice response, but also efforts to prevent such violence in the first place, public education must be seen as an important component of the province's
10.01 policy. **It is therefore recommended that Nova Scotia maintain and expand its initiatives in public education.** Such initiatives should assist in identifying behaviours that are abusive, providing information on services available to victims and their families, and increasing public understanding of the fact that intimate partner violence will not be tolerated. Components of the public education message would need to be tailored, both in terms of the specific content and the medium used to convey it, in order to reach various groups within society, including those already in, or at risk of entering, abusive relationships.

11.0 Civil Legislation

11.01 **In light of the concerns expressed by victims about having to leave their homes and about the stresses created by delays in Family Court processes, and based on the perceived benefits of the immediacy and breadth of additional remedies available to protect the victim and her children, it is recommended that Nova Scotia consider adopting domestic violence legislation as a supplement to the Framework for Action.** Given the studies done and information available from other jurisdictions concerning usage rates for emergency orders and longer term orders, it appears that emergency protection orders are of particular value and that the provisions of greatest benefit to victims are those granting exclusive occupation of the home, temporary care and custody of the children, and a specific prohibition against selling, converting, or damaging property. Provisions directing removal of the abuser and seizure of weapons are also important. Given the very low usage rates reported for longer-term orders and warrants of entry, the value of these provisions is less clear. The experience of other jurisdictions makes it clear that unless legal aid resources are adequate, these provisions will rarely be used, and that, in any case, lawyers often do not use the legislation, either because they are unfamiliar with it or because they prefer to use family law legislation to settle longer term custody, access, support and property issues.

11.02 **In the event that such legislation is adopted in Nova Scotia, it is recommended that training be conducted well in advance of the introduction of the legislation and it include: (1) the dynamics of family violence; (2) the Framework policies and procedures and application of the *Criminal Code*; and (3) the elements of the civil legislation.** The training modules developed for the initial round of training under the Framework, as well as materials from other jurisdictions with legislation, could be used as a basis for designing the training. Training should address the specific roles of those involved in responding to domestic violence. Community agencies should be involved early on in the development of training materials and in the delivery of training modules. Members of the practicing Bar will also require training through continuing legal education programming to familiarize themselves with the remedies available under the legislation.

Interagency coordination and monitoring are necessary to ensure the successful
11.03 implementation of such legislation. **It is recommended that coordination and monitoring occur at both the local and provincial levels through interagency committees, and that, if implemented, the legislation be monitored through ongoing data collection and that it be evaluated within five years of its introduction.**

Public education should also accompany the legislation to ensure the victims and the community are aware of it. Issues pertaining to the application of the legislation on reserves should be addressed in consultation with Aboriginal communities.

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Appendices

FAMILY VIOLENCE FRAMEWORK FOR ACTION 2001 REVIEW

A. BACKGROUND

This portion of the report gives an overview of the Framework for Action Against Family Violence, describes the scope and methodology of the present review, and summarizes briefly the review findings. It seems appropriate, however, to begin with a brief overview of information on the prevalence of intimate partner violence [1] in Canada, and in Nova Scotia, to the extent that such data are available. These statistics, and the human condition they represent, must form the backdrop against which existing policies, as well as recommendations for change are viewed. In considering these statistics, it is important to remember that intimate partner violence is rarely confined to an isolated incident.[2]

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[1] A variety of terms are used to describe violence perpetrated within spousal or other intimate relationships. These include: wife assault, wife abuse, battering, domestic violence, family violence, spousal/partner violence, and intimate partner violence. We have chosen predominantly to use the phrase "intimate partner violence," as this seems best to reflect the fact that the violence being discussed can arise in marriage, common law relationships, same-sex relationships, and dating relationships. We have also chosen to use the language of "victim" and "perpetrator" or, where appropriate, "accused," to describe the people involved. Where we use pronouns, we refer to the victim as "she" and the perpetrator as "he" in order to reflect the realities of intimate partner violence. Although the data from the 1999 General Social Survey indicate that both men and women reported fairly similar rates of experiencing violence, women reported experiencing more severe forms of violence and more incidents of violence than did men. Women also experienced more serious consequences from the violence, including fearing for their lives: "women are more likely to be subjected to severe forms of violence (e.g. beaten, choked, sexually assaulted), are three times more likely to suffer injury, five times more as likely to receive medical attention, and five times more likely to fear for their lives as a result of the violence. In other words, the severity and the impact of spousal violence on women and men have different outcomes and consequences" [Statistics Canada, *Family Violence in Canada: A Statistical Profile 2000* eds. V. Pottie Bunge and D. Locke (Ottawa: Statistics Canada, 2000) at 11 (hereinafter *Statistics Canada*)]. Furthermore, women were more likely than men to report that the violence had occurred on more than one occasion within the relationship (*Statistics Canada* at 14). The greater impact of the violence experienced by women also seems to be reflected in other statistics; of the nearly 15,000 cases of spousal abuse which came before the Specialized Family Violence Courts in Winnipeg between 1992 and 1997, 85% of the accused were men and 85% of the victims were women (*Statistics Canada* at 45). Similarly, when the Department of Justice Monitoring Committee analyzed 746 domestic violence incidents, randomly selected from the nearly 7000 such incidents reported to police in Nova Scotia between April 1, 1996 and August 31, 1998, it was found that 90% of the victims were female, and 10% male (*infra* note 14 at 8).

1. Prevalence of Intimate Partner Violence

In 1993, Statistics Canada conducted the first national Violence Against Women Survey (VAWS)[3] and found 29% of ever-married women (2.65 million) had experienced physical or sexual violence (in accordance with *Criminal Code* definitions) by their current or previous marital/common law partner. Almost 40% of women in abusive marriages reported that their children had witnessed the violence against them. Statistics Canada Spousal Homicide data reported that 38% of adult female homicide victims were killed by their spouses.[4]

More recently, Statistics Canada released its third annual report, *Family Violence in Canada: A Statistical Profile 2000*, which includes new victimization data obtained from two 1999 interview surveys.[5] One of these surveys, the General Social Survey, found that "7% of people who were married or living in a common-law relationship during the past 5 years experienced some type of violence by their intimate partners."[6] Of these, 37% indicated that their children (approx. 500,000) had seen or heard at least one violent episode.[7]

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[2] *Statistics Canada, ibid.* at 14.

[3] K. Rodgers, "Wife Assault: The Findings of a National Survey" (1994) 14:9 Juristat.

[4] M. Wilson, & M. Daly, "Spousal Homicide" (1994) 14:8 Juristat.

[5] *Statistics Canada, supra* note 1. The first data, the General Social Survey (GSS), derived from victim accounts of their experiences of spousal abuse reported to interviewers. The second, the Uniform Crime Reporting (UCR2), was data based on incidents or cases reported to 164 participating police forces representing approximately 46% of the national volume of reported crime.

Although it is difficult to obtain detailed statistics for Nova Scotia, approximately 7000 incidents of intimate partner violence were reported to police in Nova Scotia between April 1, 1996 and August 31, 1998 (Appendix B). The 1999 GSS found that 9% of women and 7% of men surveyed in Nova Scotia reported having experienced spousal violence in the previous five years.[8]

Although it is clear that rates of intimate partner violence are still alarmingly high, the 2000 Statistical Profile suggests that in recent years, there may have been a slight reduction of both the incidence of wife assault and the severity of violence experienced by women in abusive relationships. On the other hand, there appears to have been a slight increase of the number of women who fear for their lives.[9]

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[6] *Statistics Canada, supra* note 1 at 11. The GSS used the following definition of "spousal violence:" "experiences of physical or sexual assault that are consistent with *Criminal Code* definitions of these offences and could be acted upon by a police officer. Questions related to emotionally abusive behaviour were included in this survey to test theories about links between emotional abuse and physical violence. Rates of emotional abuse by marital partners are treated separately and are not included in the overall rates of spousal violence" (at 12). A person is defined as having a relationship if they were "married, living common-law or have a same-sex partner" (at 11).

[7] *Statistics Canada, supra* note 1 at 16.

[8] *Statistics Canada, supra* note 1 at 12.

[9] *Statistics Canada, supra* note 1 at 20-21.

2. Framework for Action Against Family Violence

In 1995, Nova Scotia introduced the Framework for Action Against Family Violence,[10] which is the subject of elaboration below. The Framework was a response to three reports issued that year which were critical of the criminal justice system's response to family violence: "The Response of the Criminal Justice System to Family Violence in Nova Scotia,"[11] prepared by Carolyn Marshall; "From Rhetoric to Reality,"[12] a report of the Nova Scotia Law Reform Commission; and "Changing Perspectives,"[13] a domestic homicide review conducted by Peggy Mahon.

Following the Framework's introduction, a set of integrated policies and procedures for responding to family violence were developed for all components of the justice system, and in March of 1996, the Minister of Justice issued a directive to all justice workers to ensure the implementation of the policies. By June of 1997, all 3000 justice workers received training regarding family violence, as well as in the specifics of the Framework for Action. From 1992 to 2000, Nova Scotia also had a broad-based government-community Family Violence Prevention Initiative coordinating provincial planning and policy efforts.

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[10] Nova Scotia, Department of Justice, Public Prosecution Service, Family Violence Prevention Initiative, Department of Community Services, *The Framework for Action Against Family Violence* (Halifax, 1995). The Framework is Appendix A to this Report.

[11] Nova Scotia, Legislative Assembly, "The Response of the Criminal Justice System to Family Violence in Nova Scotia" by C. Marshall, tabled April 4, 1995. This project is also known as the Family Violence Tracking Project, hereinafter referred to as the "Tracking Project."

[12] Nova Scotia Law Reform Commission, "From Rhetoric to Reality" (February 1995).

[13] *Changing Perspectives*.

The implementation of the Framework was assessed in 1999 by the Department of Justice Monitoring Committee.[14] This committee's report found a significantly improved response on the part of the criminal justice system to intimate partner violence. Compared to data from the Tracking Project, charge and conviction rates had increased significantly, police were much more apt to refer victims to victims' services, and the average time from a first court appearance to the final outcome had been reduced. Sentencing outcomes did not appear to have changed greatly, however, and in fact there had been a slight decrease in the percentage of convictions that led to incarceration.[15] While the 1999 Evaluation Report identified various "obstacles to the effective implementation of the Framework for Action,"[16] it did not call for changes to the Framework itself.

The response of the justice system to intimate partner violence became the focus of attention with the February 28, 2000 deaths of Lori Lee Maxwell and Bruce Allan George, and the subsequent review of the handling of that case. The Maxwell/George review focused on whether various players in the justice system had complied with the Framework for Action, and did not assess the Framework itself. One of the recommendations of that report was that "someone familiar with family violence review the Framework for Action and determine whether it could be improved." The Minister of Justice asked Dawn Russell, Dean of Dalhousie University Law School, and Diana Ginn, Assistant Professor of Law, to conduct this review. The

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[14] Nova Scotia, Minister of Justice, *Report of Department of Justice Monitoring Committee*, (Halifax, 1999), hereinafter the 1999 Evaluation Report.

[15] *Ibid.* at Appendix D, 36.

[16] *Supra* note 14 at 38.

Dean subsequently engaged the services of Carolyn Marshall, a consultant specializing in family violence, to assist with the review. We gratefully acknowledge her excellent assistance and support particularly in preparation of an overview of initiatives in other jurisdictions as well as detailed descriptions of diversion programs, domestic violence legislation, and specialized policing and prosecutorial units. In the later stage of preparation of this report, we benefitted tremendously from the editing assistance of Barbara Darby, a second-year law student.

3. Terms of Reference of the 2001 Review

An important part of the 2001 review of the Framework is the attempt to assess the current level of support for the Framework among justice workers and in the community, and to assess how the policy is currently being implemented in practice. The terms of reference for the present review required that the following be done:

- a review of justice system approaches to family violence in the other Canadian provinces and territories (the "interjurisdictional review")
- a literature review
- meetings with focus groups.

4. Methodology

The interjurisdictional review involved a comparison of domestic violence policies, legislation, and programs in the other Canadian provinces and territories. This was done in February of 2001, by way of a telephone survey (Appendix D) carried out to obtain information from other jurisdictions about their policies and programs pertaining to spousal abuse.

The literature review involved a survey of Canadian and American literature to determine what analysis has been offered of policies similar to the Nova Scotia Framework and to identify any new developments that have taken place since 1995 (the year the Framework was introduced).

Focus groups were held with multiple stakeholders, in order to gather information as to how the Framework for Action was being implemented, to assess the level of support for the Framework, and to ask for suggestions for improvements. Key questions (Appendix C) were drafted to guide the interview process with the focus groups. While many of the questions were similar in nature, the approach varied slightly depending upon the particular focus group. Victims, in particular, were assured of the confidential nature of the focus group. A brief explanation of the purpose of the focus group was provided prior to each session and a record made of the group's comments.

Thirteen focus group sessions were held around the province in four areas (Metropolitan Halifax, Truro, Sydney, Kentville) representing a catchment area of the four major regions of the province. The thirteen focus groups were comprised of sessions with:

- police and RCMP officers (4 sessions);
- police management (1 session);
- provincial court judges (1 session);
- mixed stakeholder groups representing police, Crown attorneys, transition houses, men's intervention groups, Victims' Services, Children's Aid Societies, and other community-based organizations (4 sessions);
- victims (2 sessions); and
- Nova Scotia Advisory Council on the Status of Women (1 session).

In addition, written submissions were received from the Public Prosecution Service (Appendix G), the Spryfield Committee on Woman Abuse, and Tearmann Society for Abused Women. Individual meetings were held with various members of the Department of Justice, two representatives of the defence bar, the Director of the Victims' Services Unit of the Halifax Regional Police Department, and a representative of Bryony House. Telephone interviews were conducted with a police chief and two victims who were unable to attend the scheduled focus groups.

B. SUMMARY OF FINDINGS

The results of the interjurisdictional comparison, literature review, and focus groups are summarized here very briefly; various findings will be discussed in greater length below, as each of the components of the Framework is reviewed in turn.

1. Interjurisdictional Review

All Canadian jurisdictions have spousal abuse policies, with many key elements in common, although there is some variation in scope and application.[17] During the interjurisdictional survey component of this project, each jurisdiction was asked if it had policies applying to the following: Police, Crowns, Courts, Corrections (Probation and Institutions), Victims' Services, and Other. All provinces and territories have pro-charge, pro-prosecution policies with similar provisions: police are to charge and arrest irrespective of a victim's wishes;

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[17] A number of jurisdictions are in the process of reviewing and updating their justice policies on domestic violence.

police are to carry out a thorough investigation, being cognizant of the need, wherever possible, to gather evidence from multiple sources; Crowns are to meet with victims and prosecute even if victims are reluctant to testify; victims are to be provided with support, case information, and notification of decisions/releases; Corrections is to monitor closely offenders on probation and respond immediately to breaches of conditions, and work closely with men's programs to ensure program compliance; Corrections facilities are to assess adequately, refer and make available treatment for spousal abuse offenders, assess risk in release decision-making, and ensure systems are in place to notify victims of release.

Some but not all policies also go on to outline appropriate responses to a number of other issues such as: whether contempt of court proceedings are to be initiated against a victim who refuses to testify; how to deal with dual charging of both parties; the use of risk assessment tools; and the use in court of KGB statements.[18]

In addition to mandatory charge and prosecution policies, a number of jurisdictions have introduced other approaches, including:

- specialized domestic violence police units,
- specialized domestic violence courts,
- diversion programs,
- more intensive training of those within the criminal justice system, and
- domestic violence legislation.

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[18] *R.* v. *K.G.B.* (1993) 79 C.C.C. (3d) 257, a decision of the Supreme Court of Canada, permits the Crown prosecutor to use the complainant/victim's original statement to police as evidence in Court in appropriate cases.

2. Literature Review

A review of the relevant literature since 1995 assessed recent trends in responding to intimate partner violence and recommended other possible approaches to addressing the problem. One theme that resounds throughout the various writings on domestic violence is the pervasiveness and complexity of the issue, and the need to find responses that reflect this. A number of jurisdictions have reviewed their family violence initiatives as a result of commissions of inquiry into murder-suicides and domestic violence tragedies occurring within their jurisdictions or other reports generated from monitoring and evaluation studies or reviews. These reports are listed in the attached template in Appendix E. Common to all the articles and reports is the recognition that this problem cannot be solved without a concerted, coordinated effort among all systems.

The data analysis that is available in the literature appears to support the contention that pro-charge, pro-prosecution policies have affected how cases of intimate partner violence are treated by the criminal justice system. Thus, a 1998 report entitled "Synthesis of Department of Justice Canada Research Findings on Spousal Assault,"[19] by T. Landau, reported that mandatory policy directives had resulted in:

- an increased number of charges laid,
- more rigorous prosecution of cases,
- reduced case attrition as cases proceed through the system, and

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[19] Canada, Minister of Justice, *Synthesis of Department of Justice Canada Research Findings on Spousal Assault* by T. Landau (Ottawa, 1998).

- increased use of probation and incarceration.

It also appears that the changes in the criminal justice response have had some impact on the prevalence of intimate partner violence. For instance, in comparing data collected in the 1993 VAWS with data from the 1999 GSS, Statistics Canada concludes in its 2000 Report:

> There is some evidence of a decline in wife assault in recent years....[F]ive year rates declined from 12% in 1993 to 8 % in 1999, a drop which is statistically significant.
>
> Most indicators point to a decline in the severity of violence committed against women over this time period....The differences in the 5-year rates of wife assault produced by the GSS and the VAWS may be due to the fact that these surveys were conducted in different reference periods and the decline may reflect real societal changes. Widespread efforts to reduce family violence and provide support to victims may have contributed to this decline. This result is also consistent with homicide data which also point to a decrease in lethal forms of violence between spouses.[20]

Similarly, the 1999 Evaluation Report states: "There is no doubt that the Framework for Action has increased charge and conviction rates. Such results have been obtained from numerous other studies in Canada and elsewhere."[21] Between 1994 and 1999, in Nova Scotia, court dispositions saw a rise in charge rates from 48% to 68% and a rise in conviction rates from 57% to 65%.[22]

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[20] *Statistics Canada, supra* note 1 at 20-21.

[21] *Supra* note 14 at 45.

[22] *Supra* note 14 at 13, 15. 68% represents charges laid in 509 of the 746 incidents randomly selected from over 3000 reported incidents between April 1996 and March 1997. The 65% conviction rate was calculated by linking 459 of the 509 cases (where charges were laid by police) to the court information system. The 1999 Evaluation Report obtained information on 119 cases from Jan 1, 1997 to March 31, 1997 to determine how Crown prosecutors handled charges involving spousal/partner violence. The outcomes were as follows:

Disposition	Number	Percent
Plead guilty	73	61%
Found guilty	13	11%

Other Canadian studies regarding the impact of pro-charge, pro-prosecution policies include the following:

- in a study conducted of police charging practice in London, Ontario, Jaffe and colleagues found the charge rate had risen from 3% in 1979 to 89% in 1990 as a result of the implementation of pro-charge policies. The authors also found, from victim interviews and police files, lower levels of repeat violence.[23] It is important to note that London has long had a coordinating committee to address the abuse of women and coordinate services which may influence this outcome.
- Plecas, Seggar, and Marsland surveyed 74 female victims of domestic violence to determine levels of repeat violence after police intervention (where charges were laid) and found 43% of offenders re-assaulted within the 27 month follow-up period. The repeat violence rate rose (to 54%) where cases were stayed (which occurred in 40% of the dispositions). Recidivism was reduced with peace bond, probation, jail or fine dispositions, perhaps suggesting that the imposition of criminal sanctions reduces recidivism.

An American review of mandatory charging and prosecution policies also found that these policies had, on the whole "greatly improved prospects for victim safety."[24]

Several Canadian studies have attempted to assess victims' perspectives of pro-charge, pro-arrest policies; two such studies found quite high rates of support (85% and 80%) for

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Acquitted	9	8%
Stayed	1	1%
Withdrawn	12	10%
Dismissed	11	9%
Total	119	100%

[23] Canada, Minister of Justice, *Wife Assault as a Crime: The Perspectives of Victims and Police on a Charging Policy in London, Ontario, from 1980-1990*, by P. Jaffe (Ottawa: Department of Justice Canada, 1999).

[24] D. Epstein, "Effective Intervention in Domestic Violence Cases: Rethinking the Role of Prosecutors, Judges, and the Court System" (1999) 11:3 Yale J. of Law & Feminism 1 at 5.

mandatory charging by police [25]; however, somewhat fewer women (70% and 60%) wanted charges laid in their own cases, and one of the studies found that 78% of the women did not want to testify.[26] Landau found that some victims of intimate partner violence felt disempowered by the justice system because of lack of information about the status of their case, the prosecution, release dates, and court outcome; they felt re-victimized by the court process, and lack of support.[27]

Some of the literature also provides a reminder that an improved criminal justice system response requires the dedication of sufficient resources. For instance, a 1999 study pointed out that an effective pro-charge, pro-prosecution policy requires increased training time, increased time for police investigations, and increased time dedicated to Crown preparation and Crown interaction with victims.[28] Higher court caseloads, and pressure on corrections services are also identified as consequences of the pro-charge, pro-prosecution approach. Furthermore, some commentators question complete uniformity in a pro-charge, pro-prosecution approach. Ironically (although perhaps not surprisingly, given the complexity of the issue), the very initiative intended to empower victims by reducing the opportunity for coercion from batterers–that is, the policy that charges are to be laid and prosecuted wherever the evidence warrants, regardless of the victim's stated wishes–has led to a sense of disempowerment for some women.

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[25] Canada, Minister of Justice, *Spousal Assault and Mandatory charges in the Yukon: Experiences, Perspectives, and Alternatives*, by T. Roberts (Ottawa: Department of Justice Canada, Research and Statistics Division, 1996) was a study of 57 victims of spousal violence in Yukon in 1996. T. Landau, "Women's Experiences with Mandatory Charging for Wife Assault in Ontario, Canada: A Case Against the Prosecution" (2000) 7:1/2/3 International Review of Victimology 141 was a study involving 94 women in Ontario whose male partners had been charged with assaulting them.

[26] Roberts, *Ibid.*

[27] Landau, *supra* note 25.

[28] Landau, *supra* note 25.

Landau suggests concerns that pro-charge, pro-prosecution policies may "represent...a transfer of power from the batterer to the criminal justice system," that "the options provided by the criminal justice system are too narrow and focused" particularly for those women who choose to continue in the relationship, and that these policies represent "a uni-dimensional response to a complex social problem."[29]

Similarly, an American review, while largely very supportive of the mandatory charge and prosecution approach, also notes:

> A survivor may now be forced to assist in the criminal prosecution of an abusive partner, regardless of her physical danger from retaliation assault, her cultural and religious misgivings about breaking up the family, her economic vulnerability to the loss of spousal support, and her individual need for agency and control.[30]

Other criticisms found in the literature relate not to the policies themselves, but to their inadequate or inconsistent implementation. Thus, Landau notes that when considering the application of the policies to First Nations, rural, visible minority, and immigrant women, it is important to acknowledge that these women often face additional barriers in accessing the justice system and other community supports.[31]

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[29] *Supra* note 19 at 4, cited in the 1999 Evaluation Report, *supra* note 14 at 46.

[30] Epstein, *supra* note 24 at 5.

[31] Landau, *supra* note 25.

Thus, the literature does seem to support the approach taken in the Nova Scotia Framework for Action and the pro-charge, pro-prosecution policies; however, many of the articles which show a positive correlation between such policies and a slight decrease in intimate partner violence also emphasize the need for sufficient resources to allow for implementation, and suggest that consideration be given to incorporating some flexibility into the policies.

3. Focus Groups

Focus groups generally offered strong support for the Framework for Action Against Family Violence. The criticisms that were expressed centered chiefly on problems with implementation, and lack of sufficient resources. No one suggested dismantling the Framework or changing it extensively, although some did suggest ways to amplify, or offer flexibility within, the present system. To the extent that victims were familiar with the Framework, their responses indicated that it was theoretically sound, although in fact victims remain apprehensive about their safety regardless of the Framework.

C. 1995: THE FRAMEWORK FOR ACTION AGAINST FAMILY VIOLENCE

The Framework for Action Against Family Violence is premised on the recognition that a law is only as good as the system which delivers on its promises, and that the failure of police, prosecutors, courts and related institutions and services to keep up with legislative progress or to properly implement the law can have a serious detrimental impact on efforts to combat domestic violence. Introduced in September 1995, the Framework responded to three reports that shared the conclusion that what was needed to combat family violence was not legislative reform, but rather a comprehensive strategy to improve the response of the criminal justice system to family violence. Each of these reports recommended that the justice system adopt a pro-charge, pro-arrest, pro-prosecution policy.[32]

The Framework for Action Against Family Violence addresses violence between intimate partners. It comprised the following six key components:

- improved procedures for responding to family violence based on a pro-arrest, pro-charge, pro-prosecution policy and the need for clear direction for the benefit of justice workers, community agencies, and the public;[33]

- a comprehensive training program for all justice workers to assist them in understanding the dynamics of family violence, their specific responsibilities in responding to incidents of domestic violence, and the role and responsibilities of other justice workers and community agencies;[34]

- enhanced victim support services to support the victim, to protect them from harm, and to encourage their participation in the court process;[35]

- interagency coordination based on the recognition that the effectiveness of the response of the justice system to family violence is dependent on improved collaboration and cooperation among all organizations and individuals who play a role in addressing family violence;[36]

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[32] *Supra* notes 11, 12, 13.

[33] *Supra* note 10 at 2.

[34] *Supra* note 10 at 6.

[35] *Supra* note 10 at 7.

[36] *Supra* note 10 at 8.

- accountability of the justice system for its response to family violence and adherence to specific directives and protocols through the establishment of structured audit mechanisms by each justice agency and regular public reporting;[37] and
- advocacy initiatives by criminal justice agencies to ensure that the public understands and accepts the role of the criminal justice system in responding to family violence and to enlist the support of the community for strong measures by justice agencies.[38]

In addition to the development of policies and procedures and the training of justice workers who would implement the policy, government committed additional resources to fund community-based victim support projects to assist victims going through the justice system. Some justice agencies developed an audit process to ensure adherence to policy. Interagency Committees on Family Violence throughout the province provided local interagency coordination. Overall coordination at the provincial policy level, training, public education, and interagency support was provided by the Family Violence Prevention Initiative, a government-community committee reporting to the Deputy Ministers' Committee on Social Policy, comprised of five deputies representing the Departments of Health, Justice, Community Services, Education, and Housing. The Department of Justice Family Violence Committee provided planning and coordination in the justice arena. As noted above, the Framework was evaluated by the Department of Justice Monitoring Committee in 1999.

The following section of this report summarizes: the requirements established by the Framework for each justice agency in order to implement the pro-arrest, pro-charge, pro-prosecution policy; the findings of the 1999 Evaluation Report; the comments made in relation to each justice agency in the focus group sessions conducted as part of the current review, and any initiatives or precedents from other jurisdictions that might be useful in Nova Scotia. The comments made by participants in the May to June 1997 consultation sessions are summarized in order to underline the continuing nature of some concerns.[39]

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[37] *Supra* note 10 at 7.

[38] *Supra* note 10 at 8.

1. Police

(a) The Framework Requirements for Police

The Framework required that the Department of Justice Policing Services Division, through consultation with the Nova Scotia Chiefs of Police Association, develop a Case Management Investigation Procedural Policy supportive of the pro-arrest, pro-prosecution policy.[40] The Framework directed that the Case Management Investigation Procedural Policy must contain certain guidelines, the essence of which were:

- that spousal/partner violence calls be given a high priority by dispatchers and by police;
- that police respond to and fully investigate all family violence cases, gathering as much evidence as possible at the scene to reduce reliance on victim testimony;
- that, where reasonable and probable grounds exist, police lay charges and arrest and remove the alleged perpetrator from the home irrespective of the victim's wishes;

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[39] The 1999 Evaluation Report had available to it the results of consultation sessions held in May and June 1997 with 150 managers and front-line workers from all components of the justice system throughout the province concerning the effectiveness and workability of the Framework for Action and its related policies and operational procedures (*supra* note 14 at 24-36). It also had the results of a data collection process initiated in April 1996 to collect information on spousal/partner violence reported to police during the period of April 1996 to August 1998 (*supra* note 14 at 9-18).

[40] *Supra* note 10 at 2.

- that the safety of victims and children be a paramount concern and that police refer victims to Victims' Services and/or local transition houses;
- that where there is a history of abuse or the victim fears for her safety, police not release on an appearance or promise to appear;
- that police request conditions of release and bail be imposed by a Justice of the Peace or judge of the Provincial Court; and
- that police respond promptly to reported violations of "no contact" orders, peace bonds and civil restraining orders and that charges be laid and arrest made in all cases where reasonable and probable grounds exist.[41]

The Framework also required the Minister of Justice to direct that RCMP sub-divisions and municipal police forces of sixty officers or more dedicate resources to the establishment of family crime units.[42] No such directive was ever issued by the Minister of Justice, however, and no family crime units were established.

(b) Summary of May - June 1997 Consultation Sessions

The majority of the respondents who participated in the May - June 1997 consultation sessions with the Department of Justice Monitoring Committee felt that the Framework and its related policies and protocols had had a very positive impact on the response of the justice system to intimate partner violence and that each component of the system was more aware of its own responsibilities and of the role and responsibilities of other components.[43] With respect to the role of police and their responsibilities, police representatives, participants from other sectors of the justice system, and Victims' Services representatives all agreed that intimate partner violence calls were being given a high priority by police and that the police response had improved significantly after the initial training of all justice workers which followed the adoption of the Framework.[44] Police indicated that they were receiving adequate information from dispatch concerning the presence of firearms, premise history, and urgency of the call.[45] The RCMP noted some problems with the handling of 911 calls through central dispatch and police participants recommended that peace bond information be added to CPIC (the Canadian Police Information Centre operated by the National Police Service) to enable them to respond appropriately to peace bond violations.

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[41] *Supra* note 14 at 3.

[42] *Supra* note 14 at 3.

[43] *Supra* note 14 at iv.

Police indicated that they were gathering photographs and video statements in the most serious cases, but not in lower-end offences, while Crown prosecutors expressed concern that photographs were not taken consistently, were frequently of insufficient quality, or not ready when needed by the Crown for bail hearings.[46] Crown prosecutors also indicated that video statements at the scene would improve evidence for the Court, but not all police had received training in videotaping statements or were comfortable with the technology. As well, the availability of the necessary equipment varied widely across the province.[47]

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[44] *Supra* note 14 at 24.

[45] *Supra* note 14 at 24.

[46] *Supra* note 14 at 24.

[47] *Supra* note 14 at 25.

Some police interpreted the Framework as limiting police discretion. Concerns were raised by some police and some Crown prosecutors that this was resulting in some charges being laid in the absence of reasonable and probable grounds. In relation to the charging practices of police, Victims' Services staff voiced a concern about an apparent increase in cross-charging.[48] Some participants felt that police were sometimes encouraging women to apply for peace bonds in circumstances where charges were appropriate.[49] Concern was also expressed about the reluctance of police to lay charges under the criminal harassment (stalking) provisions of the *Criminal Code*.[50]

The Framework policy requires police to include a "no contact" provision in the undertaking when releasing a intimate partner violence suspect. The 1997 consultation sessions revealed that compliance with this policy varied across the province. Crown prosecutors indicated that they did not always have the information on undertakings issued on the weekend when they had to deal with applications to vary on Monday morning.[51] Many participants expressed frustration at the frequency with which "no contact" provisions were dropped during subsequent court appearances.[52]

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[48] *Supra* note 14 at 26.

[49] *Supra* note 14 at 27.

[50] *Supra* note 14 at 27.

[51] *Supra* note 14 at 28.

[52] *Supra* note 14 at 28.

The 1997 consultations confirmed that police routinely informed the accused and the complainant that police must lay charges where the evidence supports it and that the charges can only be withdrawn by the Crown. While both the Crown and Victims' Services reported being frequently contacted by victims who wanted the charges dropped, other victims were relieved that laying charges was not their responsibility.[53]

The 1997 consultations indicated that police were aware of the requirement to refer the victim to a victims' support service, though the practice varied significantly across the province.[54] Police in most areas indicated that they did inform the victim about interim release of an accused and about the conditions of release. However, Victims' Services representatives expressed concern that they were not always informed about the interim release of the alleged perpetrator.[55]

(c) Highlights of 1996 - 1998 Data Collection Process

The 1999 Department of Justice Monitoring Committee also had the results of a data collection process that began in April 1996. It contained information on the processing of 6,964 incidents that were reported to police during the period of April 1996 to August 1998.[56] A total of 17 municipal police forces and 43 RCMP detachments had contributed data to this project.[57] Data relating to the processing of these 6,964 cases by the criminal justice system was compared to the results reported in the 1995 Nova Scotia Family Violence Tracking Project to measure the impact of the Framework policies. The statistics gathered between 1996 and 1998 provided support for the view of the majority of participants in the 1997 consultation, that the pro-arrest, pro-charge, pro-prosecution policy had resulted in an improved response by police to domestic violence calls. The data collected revealed: a significant decline in median police response time to incidents (from 9 minutes in 1996 to 7 minutes by 1997);[58] a significant increase in arrest and charge rates by police from 34% of suspects arrested in 1995 to 47% arrested by 1997,[59] and from 44% of suspects being charged in 1995 to 72% in 1997;[60] and a greatly increased rate of referral by police of the victim to victims' support services, from a 9% referral rate in April 1996 to a 78% referral rate in March 1997.[61] The increase in charge rates in Nova Scotia following the implementation of the Framework is consistent with the findings of a 1998 report on Canada-wide impacts of mandatory policy directives, which reported that these directives had resulted in an increased number of charges being laid.[62]

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[53] *Supra* note 14 at 27.

[54] *Supra* note 14 at 28.

[55] *Supra* note 14 at 28.

[56] *Supra* note 14 at iii.

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[57] *Supra* note 14 at Appendix D, 1.

[58] *Supra* note 14 at Appendix D, 35.

[59] *Supra* note 14 at Appendix D, 35.

[60] *Supra* note 14 at Appendix D, 35.

[61] *Supra* note 14 at 17.

[62] Landau, *supra* note 19.

(d) Conclusions and Recommendations of 1999 Monitoring Committee

The 1999 Evaluation Report concluded that the ambitious training program for police and other justice workers that had been implemented following the adoption of the Framework had been the most critical success factor[63] in the implementation of the Framework.

The Committee made a number of recommendations to bring about the improvements required to ensure that police and other justice workers were able to respond effectively to intimate partner violence. The following recommendations of the Committee relate particularly to the work of the police:[64]

- improve access to interpreters to facilitate communication between police and citizens who do not speak English;
- ensure the effectiveness of the 911 system in facilitating police dispatch for calls reporting spousal/partner violence;
- enter peace bond information on the CPIC system to ensure that police are aware of these orders when they respond to spousal/partner violence calls;
- review the practice of taking photographs and videotaped statements to promote consistency across the Province;
- develop a practical and effective process for facilitating police access to information regarding orders of the Family Court or Supreme Court (regarding family matters);
- review the *Emergency 911 Act* to determine if it should be amended to permit 911 recordings to be released for purposes of criminal prosecution;
- ensure that procedures are in place in all areas to ensure that victims are informed regarding interim release and sentencing outcomes; and

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[63] *Supra* note 14 at vi.

[64] *Supra* note 14 at vii-viii.

- ensure that spousal/partner violence cases are flagged and that relevant information is shared to trigger the application of the Framework for Action procedures at all stages of the justice system from arrest through court disposition.

(e) 2001 Review

(i) Police Support for the Policy

Many of the themes reflected in the consultation sessions in 1997 were repeated in the comments of participants in the focus groups held between February and April 2001. Among the participants in those focus groups, there was virtually universal acceptance of the pro-charge, pro-arrest, pro-prosecution policy. With few exceptions, police were supportive of the Framework and the mandatory charging policy. They noted that it is better to err on the side of caution to protect the victim than to allow a perpetrator to escape accountability. This is a notable shift in philosophy and attitude from 1995 when charging behaviour was identical to the victim's wishes and police felt victims' wishes should determine whether or not a charge was laid. One of the benefits of the Framework cited by many focus group participants, including both police and victims, was the removal from the victim of the burden of choice as to charge or not. It was felt that this helped to protect the victim from undue pressure from the perpetrator. Most police also indicated that they prefer the clear direction that the pro-charge, pro-arrest policy gives them.

Some police qualified their support for the policy by identifying that, while it worked in the majority of cases, it was difficult to apply in some situations, particularly those involving minor offences, insufficient evidence and conflicting stories, or an uncooperative victim. Many police felt that some alternative to prosecution was needed in exceptional cases where the violence did not result in serious injury and did not have a long history, and where the parties clearly wanted to reconcile. However, police and other participants agreed that any alternative to prosecution should be available only subsequent to a charge being laid.[65]

In some areas municipal police (sometimes with the agreement of the Crown) have interpreted the policy to mean that they have no discretion in determining whether reasonable and probable grounds exist to support a charge. Police who interpret the policy in this way maintain that they must charge on the grounds of the policy alone, even in the absence of reasonable and probable grounds and even where they suspect that justice is not being served. Police who interpret the policy in this way said "we want our discretion back," noting that any discretion they have under the Framework Policy is more theoretical than real, given the direction of the Attorney General to police and the accountability of front line police to superior officers.

Police in other areas strongly disagreed with this approach, maintaining that they do have an obligation under the Framework to assess reasonable and probable grounds and that they can only lay a charge where there is evidence to support it. These police representatives did not want to see a return to broader police discretion. They felt domestic violence had not been taken seriously enough when police had more discretion. Hence, there are significant inconsistencies in the interpretation and application of the Framework by police throughout the province. These were noted both by police and by participants from other sectors of the justice system.

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[65] See on diversion, *infra* at 56.

(ii) Initial Police Response to Calls

As in 1997, police, victims, victims' service agencies, and transition house staff indicated that the police response to intimate partner violence calls has improved since the adoption of the Framework. However, victims noted that the quality of their interaction with police depended entirely on the individual officer they dealt with and that the mandatory charging policy is not being applied consistently. Victims suggested that police need sensitivity and domestic violence training in order to understand that victims expect to be taken seriously, not to be judged or blamed, and that police must appreciate that it is not always safe for the victim to talk.

Police reported receiving appropriate information from dispatch. The problems identified by RCMP in the 1997 consultations concerning the handling of 911 calls through central dispatch were not mentioned in the recent focus group discussions. As well, police are now able to get access to peace bond information through CPIC.

(iii) Investigation

Police indicated that photographs and videotaped KGB statements are taken in serious cases, but police noted that KGB statements require a lot of resources that are not available in all areas. As well, the taking of KGB statements requires that officers have some training that many officers have not received. While there was general support expressed by Crown representatives for the investigative work of police, some Crown representatives felt police could be doing a better job of securing videotaped statements, photographs, and other evidence to reduce reliance on victim testimony. Victims also raised this concern. One victim noted, for instance, that "police did not even take photos of blood on the walls and did not take statements from other witnesses, including neighbors, but relied solely on my statement." Victims believe that gathering additional evidence would help to support their version of events and take some pressure off them, particularly when they are being characterized by the defense counsel as "crazy or vindictive."

Concentration on improved evidence-gathering was seen as a training issue. Police representatives who had benefitted from the initial training program following the adoption of the Framework found it extremely valuable and noted that it had improved their understanding of the dynamics of violence and their appreciation of their role in combatting it. They indicated, however, that there had not been ongoing training and that there was a clear need for training to catch new recruits and to provide a refresher and updates to those who received the initial training.

Some police felt that, in light of the lack of training resources and the need for specialized training in order to respond adequately and investigate fully, it would be preferable, and perhaps feasible in metropolitan areas, to have all members do initial response to domestic violence calls, but to have a domestic violence unit or specialized team do follow-up investigation.

(iv) Specialized Investigative Units in Other Jurisdictions

Some Canadian jurisdictions do have designated domestic violence units within police agencies to do the thorough investigation and follow-up required to solidify a case. These units are more typically associated with the specialized courts discussed later in the report,[66] such as the Ontario specialized courts which are about to be expanded across the province. The specialized courts in Ontario will include specialized police services to develop and maintain procedures for undertaking and managing investigations into domestic violence, with a view to enhancing investigative procedures. Some jurisdictions without specialized courts have tried specialized police investigative units or crisis response teams. For example, in Alberta, four cities/towns have spousal abuse police/social worker teams: Calgary, Edmonton, Lethbridge, and Killam RCMP. As well, Restigouche, New Brunswick uses a team approach to respond immediately to a crisis call to police. Crisis response teams focus primarily on victim support whereas the specialized teams associated with specialized courts emphasize good evidence-gathering practices.

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[66] *Infra* at 68.

The San Diego Police Department has one of the largest specialized Domestic Violence Investigative Units in the United States. Since its formation in 1992, domestic homicides in the city have dropped more than 50% from an average of 20 per year to less than ten.[67] The unit was a product of the San Diego Domestic Violence Task Force formed in 1989–now the Domestic Violence Council, a body comprised of about 40 agencies. Internal research showed that while the police department had a strong written policy, it was generally not followed in practice due to lack of training. With the introduction of training, the number of reported incidents rose almost 60% the next year. Further, in order to strengthen investigations and improve the handling of cases, as field operations were conducted out of eight regional divisions, a centralized unit was formed.

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[67] As reported in the San Diego Domestic Violence Protocol web site, online.

Whether or not special investigative units are established, good evidence gathering is recognized by all jurisdictions as critical, and there is reason to believe that a strategy of relying on evidence other than victim testimony can be successful. Such evidence may include recorded 911 calls, photographs and hospital records that document injuries, and testimony from police officers who responded to the crime scene. In Washington, D.C., the U.S. Attorney's office "introduces such evidence in every domestic violence case in which it is available, and relies on it exclusively half of the time, in those cases where the victim declines to testify for the state. The conviction rate in both types of cases is identical."[68]

This may seem surprising. One might expect that a victim's testimony would make a tremendous impact on a judge. However, during the current review, victims themselves noted that the long-term effects of trauma and stress arising from abuse, combined with the pressure of being challenged in court in the presence of the abuser, and in some cases, by him, makes them appear unstable and less believable than the accused, whose habitual approach of power and control allows him to present himself as balanced and believable. The accuracy of this perception is borne out by the writings of a number of scholars who have documented a pervasive societal view that women's stories lack credibility.[69] This societal view, combined with or bolstered by the effects of abuse on victims, undermines the persuasive impact of a victim's testimony. American scholar Epstein describes the dynamic as follows:

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[68] Interview with Robert Spagnoletti, Chief, U.S. Attorney's Office Domestic Violence Unit, in Washington, D.C. (3 September 1997), cited in Epstein, *supra* note 24 at 18.

[69] See C. Gilligan, "Getting Civilized" (1994) 63 Fordham L. Rev. 17; K. L. Scheppele, "Just the Facts, Ma'am: Secularized Violence, Evidentiary Habits, and the Revision of Truth" (1992) 37 N.Y.L. Sch. L. Rev. 123, 126-27.

> Disassociation may cause many survivors to testify about emotionally charged incidents with an entirely flat affect, or to be unable to remember dates or details of violent incidents. Hyper arousal can cause a victim to seem highly paranoid or subject to unexpected outbursts of rage in response to relatively minor incidents. The psychological phenomenon of intrusion may cause a witness to have vivid flashbacks on the witness stand that interfere with her ability to testify. Both these explanations of battered women's behaviour are not intuitively obvious, and because they differ greatly from the behaviour and demeanor that a judge encounters in his normal experience, they often are incorrectly interpreted as indications of her lack of credibility. As former prosecutor Cheryl Hanna puts it, in court "batterers can appear charming, respectful, and persuasive; by contrast, abused women can appear hysterical, vindictive, or prone to exaggeration."[70]

While the above-noted phenomena underline the importance of the judiciary receiving some education concerning the dynamics and effects of domestic violence, they also explain the importance of police gathering other evidence to reduce reliance on victim testimony and to supplement and support it.

(v) Arrest

The Framework policy requires that police, when releasing an intimate partner violence suspect on an undertaking, must include a "no-contact" condition in the undertaking. Police and victims both expressed frustration about the problem of conflicting court orders. In some cases there is a Family Court order allowing access to children and a peace bond or order for interim release containing a no-contact provision. Such conflicting orders pose a problem for police in determining the appropriate response to a call about breach of a peace bond or a no-contact order. Police and victims alike believe that the criminal justice order containing the no-contact provision should take precedence over the Family Court access order, particularly where the no-contact order is dated subsequent to the Family Court order. Asked about conflicts between Provincial Court and Family Court orders, one Provincial Court judge stated that he will look at the dates of the two orders and vary the no-contact order to say "no contact except with another person present for the purpose of arranging access to children."

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[70] *Supra* note 24 at 41.

With respect to the requirement that an interim release of a suspect on an undertaking contain a "no-contact" provision, most police did view it as mandatory. However, a few noted that the experience they had of victims subsequently contacting the accused (leading to further calls to police) caused some police to adopt a variation of the no-contact provision, saying "no contact unless initiated by the victim." Police chiefs, many police representatives, and members of the Advisory Council on the Status of Women indicated concern about this variation of the "no-contact" order. They strongly believe there is a need for a cooling off period following a violent incident and noted that the variation of the order does not eliminate the need for police to respond to a further incident anyway. As well, it was noted that the victim is often confused and upset following an incident and that the accused may exercise tremendous power for reconciliation through maintenance, custody, access and divorce proceedings. Delays in Family Court processes create further stress. "No-contact" orders and victims' support services may assist the victim in resisting pressure from the accused.

On the other hand, a member of the criminal defence Bar met with us primarily to indicate that he believes that police officers should have discretion as to whether or not to include a "no-contact" provision in an undertaking for interim release. He indicated that where the woman does have some semblance of control over her life and over her living arrangements and it is not a serious case of ongoing abuse, there may not be a need for a "no-contact" provision or perhaps the "no-contact" provision could be time limited.

Police, Crown Prosecutors, Victims' Services staff, and other participants expressed tremendous frustration at the frequent variation or dropping of no-contact conditions by judges. There is a deep and widespread concern that judges need training to enhance their understanding of the complex dynamics of intimate partner violence, of the many pressures which can be brought to bear on the victim by the alleged perpetrator, and of the post-traumatic stress disorder that long term abuse often causes in women.

(vi) Laying of Charges

A number of police officers expressed uncertainty as to whether they should charge both parties where the woman has called the police, but both parties appear to have been involved in the assault. This type of situation often gives rise to a practice of cross-charging, a practice about which victims, Victims' Services staff, and members of the Advisory Council on the Status of Women expressed grave concern. The perception of many participants is that the practice of cross-charging is on the rise. This perception is supported by the statistics gathered by the Victim Service Unit of the Halifax Regional Police Service for the year 2000, which show that the "victim" and the "accused" were co-charged in 31 files in 1998, 27 in 1999, and 80 files in 2000.[71]

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[71] 2000 Statistics for Victim Services Unit, Halifax Regional Police, prepared by Verona Singer, Coordinator, February 14, 2001.

Some police indicated that further investigation often reveals that a case, which at first appeared to involve assaults by both parties, is really a case of self-defence on the part of a victim who has suffered long-term violence. They indicated that cross-charging sometimes results from a failure to do a thorough investigation. However, both the Public Prosecution Service and many police acknowledged that cross-charges often result from a "he said, she said" situation with little additional evidence available. The Public Prosecution Service stressed that these situations pose unique procedural and evidentiary concerns and require a thorough investigation and a careful determination by an officer of whether or not there are sufficient grounds to support the laying of a charge.[72] The Public Prosecution Service recognizes that "[t]he police in some instances seem to be between a rock and a hard place" because if they do not intervene to remove a party and that party subsequently injures or kills his or her intimate partner, then "the police could well be perceived as having been derelict in their duty."[73] Nevertheless, the Public Prosecution Service points out that the laying of charges in the absence of reasonable grounds can give rise to claims of false arrest and malicious prosecution and that it may, therefore, "be helpful in difficult cases for police to seek legal advice from Crown prosecutors."[74]

In Prince Edward Island, the domestic violence policy specifically mentions dual charging. In cases where both parties claim to have been assaulted, officers are directed to consider a number of factors such as the parties' relative size, strength, demeanor, and gender; statements of witnesses (including children); reasonableness and timing of the counter-accusation; and visible marks, in determining whether to lay dual charges. Police are also directed to consult with the Crown prior to doing so.

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[72] Public Prosecution Service, Review of the Framework for Action Against Family Violence. Submission to the 2001 Review, March 2001 at 8 (hereinafter referred to as the Public Prosecution Service submission). The Appendix to this document includes the 1996 Directive of the Minister of Justice and the Public Prosecution Service Spousal/Partner Violence Policy (1996).

[73] *Ibid.* at 9.

[74] *Ibid.* at 9.

It is worthy of note that some jurisdictions in the United States have implemented a primary aggressor policy which instructs officers to arrest the primary aggressor in the incident, thus reducing the likelihood of dual arrests. In jurisdictions such as Chesterfield County, Virginia where such a policy exists, the incidence of dual charging decreased after the implementation of the primary aggressor policy.[75]

Victims, victims' service agencies, and the Advisory Council on the Status of Women again expressed concern about the reluctance of police to lay charges under the criminal harassment provisions of the *Criminal Code*. These participants believed that the reluctance of police to use these provisions of the *Code* may result from a lack of understanding on the part of the police of the dynamics of intimate partner violence and from a failure to investigate adequately the history of violence and stalking behaviour between the victim and the alleged perpetrator. It was suggested that further training of police might assist them in laying criminal harassment charges.

Once again participants expressed concern that some police are instructing victims to apply for peace bonds when charges would be appropriate. However, many police indicated that they do not recommend peace bonds because peace bonds do not provide immediate or adequate protection in the way that "no-contact" orders do. Participants indicated that in some instances it is not the police but rather the Crown, transition house staff, or Victims' Services staff who advise women to apply for peace bonds. The majority of participants agreed that peace bonds should be used only when the evidence is inadequate to support a charge. The victims who participated believed peace bonds to be "useless pieces of paper which provide little protection because police rarely enforce them and because men determined to hurt their partners are not deterred by peace bonds."

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[75] E. Cramer, "Variables That Predict Verdicts In Domestic Violence Cases" (1999) 14:11 Journal of Interpersonal Violence 1137 at 1, online: Proquest <http://proquest.umi.com> (date accessed 14 February 2001).

The majority of participants acknowledged that police routinely inform the accused and the complainant that they are required to lay charges where reasonable and probable grounds exist and that the charge can only be withdrawn by the Crown. Some victims are not happy about this, but most expressed relief at not having to bear the responsibility for laying charges. Recantation by victims is still very common.

(vii) Victim Referral and Safety

Police participants were well aware of the requirement to refer the victim to support services and, despite some variation in practices across the province, police, victims, victims' service agencies, and transition house staff all confirmed that the rate of referral of victims by police to victims' support services is very high.

(viii) Interim Release

All of the participants agreed on the importance of complying with the Framework policy requirement of informing victims about the release of the alleged perpetrator and about the release conditions. However, it is clear that this is not always done. Police in most areas indicated that they inform the victim, although sometimes it is done by Victims' Services where a referral has been made. Victims' Services expressed concern, however, that they are not always informed about an accused's interim release. In some cases it is left to the Crown to inform the victim of the interim release or to the Court to mail a copy of the order to the victim. This may be problematic, given frequent changes in the addresses of victims concerned for their own safety. Victims and transition house staff expressed frustration that few alleged perpetrators are held in custody.

(ix) Monitoring and Accountability

The Framework required that each component of the justice system establish an audit mechanism to review cases of intimate partner abuse to ensure that the policies and procedures were being followed. Municipal police reported that internal audits of files are done routinely in police departments. The audit mechanisms vary somewhat from one department to the next, but in most cases domestic violence files are flagged and reviewed by a case management officer or supervisor to ensure that the Framework policies and procedures are complied with. In a few instances, intimate partner violence files are not flagged, but are reviewed as part of a more general file audit system. RCMP representatives indicated that intimate partner violence files in RCMP detachments are flagged and audited both by the head office in Halifax and internally at the detachment level. Although some municipal police representatives indicated that there is no formalized, ongoing external audit system, the representatives of the Police and Public Safety Services Division of the Department of Justice indicated that it does audits of municipal police agencies and reports to the Chief in cases where the policy has not been followed.

Representatives from the Police and Public Safety Services Division of the Department of Justice noted that internal record keeping involves three processes: (1) reports on investigations of individual incidents; (2) file/case management; and (3) record management. They indicated that one of the problems they sometimes see in their audit is in carrying through from the individual incident to the larger case file. They stressed the importance of an officer responding to a call knowing whether there has been an earlier incident. As well, they indicated that there must be a supervisor overseeing all cases, noting discrepancies in record keeping and in compliance with the Framework, but also identifying cases which are ongoing problems in the community that require a co-ordinated agency approach involving contacts with other departments or services, such as Community Services.

Policing Services representatives also pointed out that spousal/partner violence and domestic disputes both fall under the Framework, but that in police practice they are dealt with separately, with the result that family incidents involving violence are often well documented, but domestic disputes without violence are not. Yet both are a critical part of the history of family violence in a particular case.

(f) Conclusions and Recommendations Regarding Police

While there is widespread support among police for the pro-charge, pro-arrest, pro-prosecution policy embodied in the Framework, there are significant inconsistencies and some difficulties with the interpretation and application of Framework policies and procedures by the police. The inconsistencies include: the failure of some police to appreciate or to accept the obligation to assess reasonable and probable grounds; wide differences in attitude and approach to victims; variations in the quality of investigations conducted (especially in the taking of photographs and of videotaped statements); a notable increase in cross-charging; and variations in the wording of no-contact provisions, in the circumstances in which peace bonds are recommended, and in the practice of informing the victim about the interim release of the accused. As well, there appears to be uncertainty as to how to deal with difficult cases and reluctance to use the criminal harassment provisions of the *Criminal Code*. Police themselves are aware of many of these inconsistencies and difficulties. Police, and focus group participants from other justice sectors and from community organizations, suggested that training would help to eliminate many of these problems. **It is therefore recommended that Nova Scotia develop a strategy for delivering an ongoing training program for police and other justice workers, using and building on the successful training done immediately following the implementation of the Framework. The training should address all of the issues dealt with in the original training program and the inconsistencies and difficulties identified above. Participants from all justice sectors and from community organizations should be involved in its development and delivery.**

Given the importance of good evidence-gathering practices to the successful prosecution of domestic violence cases and the benefits achieved in some jurisdictions through the use of specialized investigative units, it is recommended that in metropolitan areas where the number of domestic violence incidents reported annually justifies it and the size of the police force permits it, RCMP sub-divisions and municipal police forces dedicate resources to the establishment of a specialized domestic violence investigative unit. It is also recommended that a process or mechanism be established for each municipality in the Province to do the thorough investigation and follow-up required in difficult cases. This mechanism might include a single specialized domestic violence police investigator within each municipality or, in the case of smaller municipalities, a special domestic violence investigator shared between adjoining municipalities. Each municipality should also have within its police force a crime prevention victims' services coordinator.

As noted previously, frustration was expressed by both victims and police in cases where there are multiple, conflicting orders governing the existence of a family. Such orders often include a Family Court order allowing an accused access to children and a conflicting peace bond or order for interim release containing a no-contact provision. Conflicting orders of this kind pose a problem for police in determining how to respond to a breach of the peace bond or no contact provision. **It is recommended that this issue of conflicting orders be referred by the Minister of Justice to the Chief Judge of the Provincial Court, to the Chief Justice of the Supreme Court, and to the Chief Judge of the Family Court for consideration.** It may be that the solution is to ensure that Justices of the Peace and Provincial Court Judges make it a routine practice to inquire as to the existence of a Family Court order allowing the accused access to the children, and for Family Court judges to routinely inquire as to the existence of a peace bond or no-contact provision, and for judges of each court to tailor their own orders accordingly. In cases where there is a pre-existing Family Court order for access, for example, the no-contact provision could perhaps provide "no-contact except with another person present for the purpose of arranging access to children."

In light of the uncertainty expressed by police officers as to how to deal with "he said, she said" situations, the concern expressed by victims and community organizations about the increase in cross-charging, and the unique procedural and evidentiary concerns posed by such cases, it is recommended that police seek legal advice from Crown prosecutors in difficult cases. It is also recommended that consideration be given to the adoption of a primary aggressor policy requiring officers to determine and arrest the primary aggressor in the incident, thus reducing the likelihood of cross-charges.

Victims are not always being informed about the release of the alleged perpetrator and about the release conditions. **It is therefore recommended that police procedures within each department or detachment be reviewed to ensure that both victims and Victims' Services are informed regarding interim release.**

Both municipal police and RCMP take their monitoring and audit responsibilities seriously. However, a couple of areas were identified for improvement. One of the problems identified by the Police and Public Safety Services Division of the Department of Justice in its audits is in carry through from the individual domestic violence incident to the larger case file. It is important that this carry through process be overseen by the case supervisor responsible for noting discrepancies in record keeping and in compliance with the Framework. As well, victims,

Victims' Service representatives, members of the Nova Scotia Advisory Council on the Status of Women, and representatives from the Police and Public Safety Services Division all noted that in police practice, domestic disputes are treated quite separately from domestic violence calls. **It is recommended that police document domestic dispute calls as carefully as they document intimate partner violence incidents, since both are a critical part of the history of family violence in a particular case.**

2. Crown Attorneys

(a) The Framework Requirements for the Crown

The key elements of the 1995 Framework with respect to Crown Attorneys relate to orders with protective measures and Crown interaction with victims. The Framework indicates that applications for judicial interim release (bail) should include a request for a "no-contact" or other protective order in appropriate cases. When such an order is breached, a request should be made that bail be revoked and the accused detained in custody until trial. The Crown is directed to prosecute without delay all violations of court orders intended to ensure the safety of victims of family violence. With regard to victims, the Framework recommends that the Crown meet with victims prior to trial, as well as with other witnesses. Where and to whatever extent possible, victim testimony should be supported through the use of other evidence. The Crown also has an obligation under the Framework to refer victims to Victims' Services and/or a local transition house.

(b) March 1996 Ministerial Directive

The March 1996 Directive of the Minister of Justice reiterates the requirements for meeting with victims and requesting "no-contact" or other protective order in all appropriate cases on application for judicial interim release, and for prosecuting without delay all violations of such orders. The Directive also indicates that where sufficient evidence is available, the Crown shall prosecute all charges involving intimate partner violence, "regardless of the victim's/complainant's wishes, unless public interest considerations dictate otherwise."[76] The Directive requires that the Crown shall make every reasonable effort to get early court dates, and that the victim shall be informed by the Crown of the right to submit a victim impact statement to the court.

(c) The 1999 Evaluation Report

With regard to Crown implementation of specific elements of the Framework, the 1999 Evaluation Report found that there were variations across the province as to how victims are informed of conditions of release on bail, and regarding referrals of victims to Victims' Services and/or a local transition house. Crowns indicated that they made every effort to meet with victims, but sometimes this was not possible until the day of the trial. As well, there was variation in the way in which victims are informed of the right to submit a victim impact statement. Sometimes this information is communicated by the Crown, sometimes by the investigating officer at the request of the Crown, and sometimes by Victims' Services.

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[76] *Supra* note 72, Appendix.

(d) 2001 Review

It is difficult to obtain comprehensive, up-to-date data on the prosecution of domestic violence cases in Nova Scotia. The Framework for Action states:

> Each justice agency will be required to implement a structured audit mechanism. This system will monitor response to family violence incidents and will include mandatory reporting of reasons in cases where charges are not laid or subsequently withdrawn. Victim satisfaction with criminal justice intervention will form part of the audit process.[77]

In its 1999 Report, however, the Department of Justice Monitoring Committee noted that "an ongoing monitoring process has not been fully implemented by the Public Prosecution Service,"[78] and the Public Prosecution Service stated in its submission to the current review that its internal audit of family violence cases is not yet complete: "Data-gathering is finished, however the methodology used has been criticized. Additionally, analysis and consultation with Crown attorneys have yet to be done."[79]

The issue of monitoring Crown performance was also raised in focus groups. It was suggested that those who comply with the Framework for Action should receive positive feedback, and Crowns should be held accountable for non-compliance with the Framework. The failure of the Public Prosecution Service to audit its adherence to the Framework and to track cases on an ongoing basis was seen by some Crowns as a significant failing in the implementation of the Framework for Action.

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[77] *Supra* note 10 at 7.

[78] *Supra* note 14 at 42.

[79] *Supra* note 72 at 2.

Despite this lack of data, focus group discussions offered useful insights into how Crowns themselves view the Framework for Action, and into how others, including victims, view the Crowns' implementation of the Framework. The Public Prosecution Service also provided further comment on the Framework in its written submission (Appendix G).

Focus group commentary regarding the prosecution of domestic violence cases tended to fall into four categories: analysis of the Framework's implementation and suggestions for continued improvement within the current Framework; discussion of the difficulty in balancing the need for a pro-prosecution policy with the need to respect victim autonomy; a weighing of the pros and cons of having some form of diversion program available for cases which fit within certain specified guidelines; and discussion of the need for or feasibility of a specialized domestic violence court for the prosecution of cases involving intimate partner violence. Each of these topics will be discussed in turn.

i. Implementation

Introduction

It was clear from the focus groups that changes have occurred in prosecution practices since the inauguration of the Framework; however, it was also clear from the focus groups that adherence to the Framework policies is not completely consistent. There seems to be variation not just among individuals, but from one region to another. This sense of inconsistency came not just from the comments of other focus group participants, but from Crown Attorneys themselves. Some Crowns expressed strong support for the philosophy behind the Framework; however, some Crowns expressed doubts about the utility of a mandatory pro-prosecution approach, particularly in cases where a victim is adamantly opposed to testifying.

The Public Prosecution Service submission was on the whole quite supportive of the Framework for Action, stating: "[t]here has been a remarkable change for the better in only five years"; training has led to "better and more consistent handling of family violence cases;" and the Framework has helped foster distinct improvements in communication and cooperation among various parts of the justice system.[80] However, the Public Prosecution Service submission also referred to "difficulties in reconciling government policy on the proper exercise of prosecutorial discretion with the government policy regarding domestic violence."[81] This difficulty was seen as having led to inconsistencies in the prosecution of domestic violence cases, and the Public Prosecution Service stated that revisions are needed to its internal directive on implementing the Framework.[82]

With regard to Crown implementation of specific aspects of the Framework, a transition house representative stated in a focus group that while Crown handing of spousal violence is much improved, meetings with victims before trial are still very rushed. This representative also suggested that some Crowns still need to ask more indepth questions in court regarding the history of abuse in a particular case.

Victims also spoke of the difficulty in reaching the Crown and how important it was to them to meet with the Crown in advance of trial. Some victims felt that the Crown had been unprepared in their case, and questioned why additional available evidence (e.g. a 911 tape) was not used to secure conviction. Several victims commented on the Crown's failure during hearings to object to inappropriate and irrelevant comments made by defence counsel and the abuser (e.g. attacks on the victim's weight, lack of education, etc.).

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[80] *Supra* note 72 at 1.

[81] *Supra* note 72 at 2.

[82] *Supra* note 72 at 9.

A number of focus group participants, including several Crowns, spoke of the lengthy delays from the time a charge is laid until the matter is resolved in court; as one person commented, victims need to be able to get on with their lives, yet cannot do so with the trial pending for many months. The concern about delays had also been raised in the 1999 Evaluation Report, which found that the delay encountered in setting trial dates varied significantly from one region to another. In its submission to the present review, the Public Prosecution Service also spoke of significant delays, noting that spousal violence cases are only fast tracked if the accused is in custody, and that attempts by the accused to secure legal aid funding may also delay the process. According to the submission, a matter is often not set down for trial until 5 months after the incident, and once the plea is entered, there is a 3 to 12 month delay until the trial. Acquiring a pre-sentence report can cause up to 2 months' further delay. The Public Prosecution Service recommended that domestic violence cases be arraigned within 2 weeks of the incident and that the trial be held within 6 weeks. The Public Prosecution Service acknowledged in its submission that this change could only occur with increased resources in the justice system, including legal aid resources to allow for immediate representation.

Presumably sufficient resources and training could go a significant way towards resolving concerns about inconsistent application of the Framework, insufficient meeting time between Crowns and victims, inadequate case preparation, and delays. However, some critiques of the

Framework for Action or similar policies intimate that, by their very nature, these policies raise difficult issues about balancing conflicting interests. Some critiques state explicitly that even perfect implementation of pro-charge, pro-prosecution policies cannot be a complete answer, given the nature of the criminal justice system, and paradoxes embedded within such policies. One possible answer to this analysis is to augment reliance on the criminal justice system with some form of diversion. The issue of diversion programs is discussed in the next section. This section focuses on some of the problems which arise with criminal prosecution of charges involving intimate partner violence.

In listing a variety of reasons why domestic violence cases may fail in the courts, the Public Prosecution Service surmised in its submission that the focus of the criminal justice system (state versus offender, with the victim simply in the position of a witness), may lead some victims to feel that their concerns regarding the impact of the violence are not sufficiently central to the trial. The same analysis was offered within at least one of the focus groups. One victims' support worker noted that victims who have not participated in the court preparation services offered by the Department of Justice Victims' Services may not understand that the role of Crown Attorneys in the criminal justice system is to represent the state, not the victim.

A key component of a pro-prosecution policy is that cases involving intimate partner violence are to be prosecuted whenever there is sufficient evidence,[83] regardless of the wishes of the victim. This is seen as protecting victims from being coerced into requesting a stay, and as reflecting the fact that domestic violence is a crime, affecting not only individual victims, but society as a whole. A pro-prosecution approach is found in the domestic violence policies of each of the Canadian jurisdictions, although perhaps not surprisingly, statistics would suggest variations in the implementation of the approach. The goal of ensuring that intimate partner violence is treated as a crime is a laudable goal, yet it may run counter to the wishes of some victims.

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[83] During the focus groups, it became clear that the pro-charge aspect of the policy was not interpreted consistently by police officers: some understood that charges were to be laid whenever there was reasonable and probable grounds to do so; others seemed to believe that the Framework required that a charge be laid whenever there was an allegation of domestic violence, without any assessment of reasonable and probable grounds. Those who took the latter approach commented that they saw discretion as existing at the Crown level; therefore the police should always charge and then leave it for the Crown to "sort out." If charges are laid without

As an American article notes:

> Mandatory arrest laws and no-drop prosecution policies have moved domestic violence criminal prosecutions to a position of rough parity with crimes perpetrated by non-intimates, and have greatly expanded the tools available to battered women seeking to escape abuse. The concept of treating family abuse "like any other crime" is finally within reach. But is this kind of equality really what is best for battered women?[84]

This paradox is probably most evident in discussions of variations of no-contact orders and of the appropriate response of Crowns and judges when victims in domestic violence cases make it clear that they do not wish the prosecution to proceed.

Variation of No-Contact Orders

The 1996 Directive of the Minister of Justice provides that, on applications for judicial interim release (bail), the Crown shall request a "no-contact" or other protective order in all

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reasonable and probable grounds, or without sufficient gathering of evidence, Crowns may be forced, after an assessment of the case, to conclude that a conviction is unlikely, and therefore stay or drop the charge.

[84] Epstein, *supra* note 24 at 16.

appropriate cases. The issue of requests for variation is elaborated upon in the internal policy of the Public Prosecution Service:

> Where a complainant/victim initiates a request to vary a "no contact" condition the Crown Attorney before agreeing to any variation should consider all the circumstances of the request and where, in the discretion of the Crown Attorney, it is necessary in the interest of justice the Crown Attorney should facilitate the placing of the undertaking or recognizance on the court docket where upon the complainant/victim should describe under oath all of the circumstances of the request.[85]

A variety of views were offered in focus groups regarding the issue of victim requests for variations of no-contact orders. Significant frustration was expressed by focus group participants, although for a variety of reasons: some saw such requests as evidence that a strict policy of attaching no-contact orders is too rigid, particularly in the case of couples who wish to continue their relationship. Others commented on the difficulty of distinguishing between those requests for variation which genuinely reflect the victim's wishes and those that are motivated by fear. Still others saw judges' or Crowns' acquiescence to such requests as proof that the philosophy behind the Framework for Acton is not yet fully accepted, and that the complexities of battered women's lives are still not fully understood.

Victim Reluctance to Proceed

Some victims may also express reluctance in having the criminal prosecution proceed. The Crown may be asked to drop the charges; where that request is not successful, some victims will refuse to attend the trial, or will give testimony which conflicts with earlier statements to the police, and exonerates the accused. These issues are discussed in turn.

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[85] *Supra* note 72, Appendix.

"Stay rate" (or in American literature, "drop rate") is the term used to reflect statistics on the percentage of domestic violence charges which are stayed or withdrawn for want of prosecution, often because a victim has failed to appear or refused to testify.

In 1994, before the introduction of the Framework for Action, the stay rate in Nova Scotia was 34%.[86] Before the Framework, victim requests were sometimes sufficient to have charges stayed. Post-Framework, the "stay rate" fell to 27%.[87] By way of comparison, it is relevant to note that in the specialized Family Violence Court in Winnipeg, stay rates initially dropped but then rose steadily to level off at 47%[88] and that Ontario's two domestic violence courts have stay rates of 22%.[89] In the focus groups, at least one person suggested that in the last several years, more charges are being dropped in Nova Scotia for want of prosecution; however, without adequate statistics, it is impossible to know whether this is the case or not, or to know whether stay rates vary from one region of the province to another.

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[86] Tracking Project, *supra* note 11. The stay rate takes on even greater significance when it is remembered that the same Report found that charges were laid in only 44% of domestic violence calls to the police (a figure which corresponds with the numbers of victims who asked that a charge be laid).

[87] *Supra* note 14.

[88] The stay rate has increased dramatically from 22% in the first year to 47% in 1997 which Ursel attributes to (1) the shift in discretion from police to Crowns in determining whether a case proceeds and to (2) Crown policy that, while emphasizing vigorous prosecution, permits the Crown not to proceed "at the expense of the victim" (*Statistics Canada, supra* note 1 at 46). Ursel argues that "this dual and contradictory mandate comes closer to reflecting the complex nature of domestic violence than the older, simplistic standard that equates success with conviction" (at 46). This view suggests that it may take victims several contacts with the justice system before they are ready to testify and view the courts as resource. Victims are referred by the Crown to the Women's Advocacy Program for counselling and a discussion of options prior to a Crown decision not to proceed.

[89] *Supra* note 1 at 48.

The policy of the Nova Scotia Public Prosecution Service, developed in 1996 to implement the Framework for Action, provides the following comment on this issue:

> Wherever the Crown Attorney is satisfied that a reasonable chance of conviction exists in a spousal/partner violence case the Crown Attorney shall pursue the prosecution of charges unless public interest considerations dictate otherwise.
>
> The decision not to carry on with a prosecution is a responsibility of the Crown Attorney. Prior to coming to such a decision, the Crown Attorney should consult with the investigating police officer and wherever possible, should consult with the Regional Crown Attorney, the Associate Regional Crown Attorney, or his delegate for their region. A decision to discontinue a prosecution shall be reported to the Deputy Director of Public Prosecutions by the Crown Attorney. Where a decision is made not to continue with a prosecution for public interest considerations, those reasons will be stated in open Court unless it is inappropriate to do so. In all cases, the reasons for discontinuance will be recorded in the Crown file.[90]

The 1999 Evaluation Report found that where a domestic violence prosecution was discontinued, Crowns usually consulted with the investigating police officer and the victim, but rarely with the Regional Crown. Reasons given in the 1999 Evaluation Report for the withdrawal or dismissal of cases included that the victim refused to attend in court, recanted or lied on the stand during trial, evaded the service of a subpoena, moved out of the province or country, requested that the charge be withdrawn, or was very hostile towards police and Crown.[91]

The relationship between stay rates and an effective, appropriate justice system response to domestic violence has been the subject of some discussion in Canadian and American literature. There seems to be some evidence that "no-drop policies yield substantial positive results, including the reduction of homicides....No-drop policies also appear to lower recidivism and strengthen the message that intimate abuse will not be tolerated."[92] However, some see rigid adherence to such policies as resulting in the disempowerment and further re-victimization of victims.[93] On the other hand, some of the literature on intimate partner violence (for example, Epstein[94]) and some focus group participants indicated that in many cases, a victim's unwillingness to proceed with the charge is significantly reduced where adequate victim supports are in place. This suggests that often it is inadequate implementation of a pro-prosecution policy, not the policy itself, which disempowers victims.[95]

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[90] *Supra* note 72, Appendix.

[91] Other reasons included that the accused entered into a peace bond, that key witnesses could not be located, Crown witnesses were thought to be unreliable, or a review of the evidence revealed that no offence had occurred (*supra* note 14 at Appendix D, 24).

When a charge is not stayed, victim reluctance to proceed within the criminal justice system may manifest itself in reluctance to testify, testimony that conflicts with previous statements to the police (often referred to as recantation), or failure to attend the trial. According to the 1999 Evaluation Report, Crown Attorneys stated that if the victim recants, it is almost a certainty that the accused will be acquitted.[96] Even where KGB statements were available, the criteria for admission of such statements is onerous. This issue of victims who are reluctant to participate in the trial process raises questions of whether a warrant should be issued to ensure attendance at trial, or whether contempt proceedings should be initiated against a victim who refuses to attend, or to testify.

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[92] *Supra* note 24 at 15-16.

[93] *Supra* note 72 at 5.

[94] *Supra* note 24 at 19, for example.

[95] See *infra* 65, 66 on this issue.

[96] On the issue of victim recantation specifically, the 1999 Evaluation Report (at Appendix D, 25) found that victim recantation "was a factor in 10 [of the 119] cases and led to withdrawal/ dismissal in 3 cases, acquittals in 4 cases, a reduction in charges convicted on in 2 cases...and appeared to have no effect in 1 case." In cases involving recantation, the Crown inquired into the cause of the recantation in 4 cases, met with the victim to advise of available support services in 2 cases, and instructed the police to take a statement from the victim in one case.

Domestic violence policies in other jurisdictions are not completely consistent on these issues; however, there appears to be a trend away from attempting to force a victim's participation through warrants or contempt proceedings. For instance, Ontario provides that Crown counsel are to attempt to convey to victims the possible ramifications of non-appearance, and to consult with the Regional Director before requesting a contempt citation for victims who refuse to testify. The British Columbia policy directs that Crowns should not apply for a material witness warrant to compel the victim of domestic violence to appear, unless circumstances are severe and there is some likelihood she will testify. Where a judge is considering contempt proceedings, for failure on the part of a victim to appear or testify, the Crown is to take the position that such proceedings are inappropriate, ineffective and likely to re-victimize, unless a child is at risk of harm. In Quebec, victims of domestic violence are not to be compelled to testify by summons unless there are exceptional circumstances. Applications for an arrest warrant are not to be pursued. Saskatchewan's policy discourages contempt proceedings against a victim who does not appear or who refuses to testify. Federal policies govern the criminal justice system in the Northwest Territories, Nunuvut, and the Yukon Territory and apply to the RCMP and federal Crown prosecutors. Under these policies, Crowns are not to move for criminal sanctions against a victim of domestic violence without prior approval of the Regional Director.

In Nova Scotia, the Public Prosecution Service policy sets out the procedure to be followed if a victim recants, or fails to appear in court in response to a subpoena:

> Where a complainant/victim fails to appear in Court in response to a subpoena, the Crown Attorney should take such steps, as in the opinion of the Crown Attorney, are necessary to ensure that the Crown retains control and appears to retain control over the prosecution. It is of paramount importance that no one, (in particular neither the complainant\victim nor the accused) perceives that the criminal process can be frustrated by the complainant\victim failing to respond to the subpoena. Where the complainant\victim fails to respond to a subpoena, the Crown Attorney should consider the following options:
> (a) requesting an adjournment;
> (b) requesting a Warrant and, where appropriate, requesting that it be held for sufficient time to determine the reason the complainant\victim failed to appear. Obtaining a Warrant is not intended to punish the complainant\victim for being reluctant to testify, but rather as a means of keeping the prosecution alive in the hope of protecting the complainant\victim in the short and long terms;
> (c) requesting the authority to enter a stay of proceedings;
> (d) offering no evidence. Since the decision to offer no evidence amounts to a discontinuation of the prosecution, this decision should be made in accordance with [other policy principles].[97]

The 1999 Evaluation Report found that in most instances where a victim does not appear when subpoenaed, Crowns ask that a warrant be issued. However, the Public Prosecution Service noted in its submission that a reluctant witness who is forced to testify is likely to perceive the Crown as an enemy and will become even less willing to co-operate.

While there was discussion in a number of focus groups of the fact that some victims will be reluctant to testify, or may change their testimony from the statement given to the police, it was also reiterated that many women are relieved that the pro-charge, pro-prosecution framework lifts the onus from them, and that many women do not refuse to testify, and do not lie on the stand. Furthermore, a victim's ability to take part in the criminal justice process was seen as closely related to the degree of support that was offered to her during that process. Apparently there are very few recantations when court accompaniment is available.

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[97] *Supra* note 72, Appendix.

(e) Conclusions and Recommendations Regarding Crown Attorneys

One theme runs throughout the results of consultations by the 1999 Department of Justice Monitoring Committee and the focus group discussions in the current review: that there has been inconsistent acceptance among Crowns of the philosophy underlying the Framework for Action. While there may be difficulties inherent in carrying out a pro-prosecution policy in the context of intimate partner violence, some Crowns see the Framework as representing the most appropriate response to such violence, and characterize the difficulties as stemming largely from the complexities of intimate partner violence itself, inadequate implementation of the Framework (for instance, police failing to gather available independent evidence) or inadequate resources (for instance lack of court orientation and accompaniment for victims). Other Crowns see difficulties in implementing the Framework as highlighting flaws inherent in any pro-prosecution policy, and as revealing the need for greater flexibility in such policies.

It is recommended that the primary justice system response to intimate partner violence should be to treat it for what it is: criminal activity deserving of sanctions from the criminal justice system. Furthermore, it is recognized that simply allowing wishes expressed by the victim to dictate whether or not a particular charge proceeds would be a retrograde step, providing perpetrators with an opportunity to coerce victims into asking for stays. Thus, even if some flexibility might be introduced (as discussed below in the portion on diversion), a pro-charge, pro-prosecution philosophy should remain the

cornerstone of the Framework. The goal must then be to translate this philosophy into securing convictions where a crime has occurred, and enhancing victim satisfaction with the process.

It is recommended therefore that ongoing training be implemented to make certain that all Crowns[98]

- understand the dynamics of intimate partner violence and the reasoning behind a pro-prosecution policy;
- give priority to cases involving intimate partner violence, in terms of asking for early court dates;
- become versed in using independent evidence (where available) so as to reduce reliance on victim testimony;
- recognize the importance of ascertaining from victims, and, as far as possible, introducing as evidence in court, information regarding past incidents of violence. It is hoped that such evidence, in conjunction with statistical information on the extent to which victims generally experience repeated acts of violence before calling the police, might assist the court in recognizing that a first charge rarely represents an isolated incident;
- follow Public Prosecution guidelines intended to reduce the stay rate of charges involving intimate partner violence; and
- appreciate the importance of close liaison with Victims' Services.

It is also recommended that sufficient resources be allocated to the Public Prosecution Service to allow Crowns to carry out the steps required for effective prosecution of charges involving intimate partner violence.

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[98] The issue of training, for all sectors of the justice system, is discussed in more detail in a separate section.

It is furthermore recommended with regard to implementing the current Framework that the Public Prosecution Service complete its internal audit of intimate partner violence files and put in place a system for on-going monitoring, to ensure that Crown treatment of such files is in keeping with Framework policies.

(f) Diversion

During the present review, the issue of whether the criminal justice system should offer a diversion option for certain carefully screened domestic violence cases arose in the interjurisdictional comparison, the literature review, and several of the focus group meetings. References were also made during the focus groups to "restorative justice,"and "alternative dispute mechanisms." For the purposes of this review, the term "diversion" will be used to mean a post-charge, pre-trial early intervention option with a focus on counselling and treatment for the offender.[99] At that stage in the process, Crown Attorneys would have substantial involvement in any decision regarding diversion; therefore, it seems appropriate to include the issue in this portion of the review.

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[99] There are four possible entry points to a diversion program: pre-charge, post-charge, post-conviction, post-sentence [Nova Scotia, Minister of Justice, *Restorative Justice: A Program for Nova Scotia* (Halifax: Communications Nova Scotia, 1998) at 8.] While the focus of most commentary on diversion in the domestic violence context is on post-charge diversion, it should be noted that other approaches are being used in some jurisdictions. For instance, some aboriginal communities use sentencing circles to develop alternative sentencing processes more reflective of community needs. The limited evaluations of such processes that are available suggest ambivalence regarding the merit of such an approach. While 72% of offenders involved in one community's healing circle found it a positive experience, only 28% of victims did so [LaPrairie (2000), cited in Canada, Minister of Justice, *Alternatives to Prosecution in Domestic Violence Cases: An Overview of the Research Literature*, by S. Moyer (Ottawa: 2000)]. An alternative approach to certain domestic violence cases which appears to operate outside the criminal justice system, has been used in Australia and has been tested in Newfoundland [Burford, G. & Pennell, J., *Family Group Decision Making Project* (National Crime Prevention Council of Canada, 1997)]. Known as the community conferencing strategy, this approach is based on the philosophy that shaming and apology are more effective than punishment in reaffirming community values, and that "communities of concern," comprised of the victim and

In most Canadian jurisdictions, the justice policy on domestic abuse explicitly excludes such cases from consideration for diversion; however, this is not true of every jurisdiction.[100]

(i) Ontario

Post charge "diversion" is available in parts of Ontario[101] through a component of the Ontario Domestic Violence Courts initiative. This model offers an early intervention stream for offenders who have no prior convictions for domestic violence, did not use a weapon in the commission of the offence, and caused no significant harm to the victim.

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offender's family and friends and others, are better equipped to intervene in family violence than is the justice system. In Newfoundland and Labrador, the Family Group Decision-Making Project was designed to create a forum in which families could participate in deciding the best course of action. Time was spent by a coordinator preparing families and professionals for the conference and the family was left to develop a plan that addressed the issues identified by the referral source (e.g. child welfare caseworker or police). Once developed, the referral source had to approve the plan as did the coordinator to ensure it addressed the issues, brought the requisite services to bear in support of the family, and included a system to monitor implementation. Police or child welfare were to monitor safety of family members. For further discussion, see Johnson & Kanzler, "Treating Domestic Violence: Evaluating the Effectiveness of a Domestic Violence Diversion Program" (1993) 15 Studies in Symbolic Interaction 271; H. Johnson, *Dangerous Domains: Violence Against Women in Canada* (Scarborough: Nelson Canada, 1996); several chapters in Valverde, M., MacLeod, L. & Johnson, K., eds., *Wife Assault and the Canadian Criminal Justice System: Issues and Policies* (Toronto: University of Toronto, 1995) and C. G. Nicholl, "From Battering to Bettering: Changing the Lives of Victims of Domestic Violence and their Abusers." *Perspectives on Crime and Justice: A Series of Papers Reconsidering Current Approaches* (Washington, 1998).

[100] See Appendix E.

[101] Ontario does not consider this to be diversion because the offender still receives a criminal record.

The early intervention stream, often used in situations where the victim and offender wish to reconcile, permits the accused to plead guilty and be ordered, as a condition of bail, to attend a Partner Assault Response (PAR) program. Screening is done by a specialized Crown. The Victim Witness Assistance Program consults with the victim and provides information and referrals to community resources. Upon completion by the offender, the PAR program provides a report to the Crown which, if satisfactory, can be considered as a mitigating factor in sentencing. The Crown usually recommends a conditional discharge.[102] In the Ontario model, completion rates for early intervention treatment were higher than in post- sentence court-ordered programs, and few in the former group were charged with re-offending while in the program.[103] If the accused does not successfully complete the program, he has breached bail conditions and can be processed via the prosecution stream.

(ii) Yukon Territory

The Yukon Territory offers a "Domestic Violence Treatment Option" (DVTO) sitting of the Territorial Court which is closely tied with the Assaultive Husbands Program individual and group counselling for perpetrators.[104] A half day of court a week is set aside to expedite domestic violence cases during which an accused charged with spousal assault has the option to plead guilty, agree to treatment through the DVTO, and return to court for sentencing following completion. Once an offender applies for the DVTO, the case is adjourned for 28 days during which an assessment is made by the Family Violence Prevention Unit. The Unit reports back to the court on offender eligibility. Probation Services also completes a report similar to a pre-sentence report into which Victims' Services, the Crown, and defence counsel provide input. Repeat offenders may apply for the DVTO and although most offences are expected to be common assault, more serious offences are not automatically excluded. If ineligible, the offender returns to the regular court process.

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[102] *Stastistics Canada, supra* note 1 at 47.

[103] Moyer, *supra* note 99.

[104] As with Ontario, Yukon Territory does not label this as a diversion program, since a domestic violence case still results in a charge; arrest if appropriate; conviction; sentencing, with a probation period of up to two years; and a criminal record. Breaches of any probation order imposed can result in re-sentencing of the defendant on the original charge and/or sentencing on further charges.

The Family Violence Prevention Unit in the Yukon Territory runs the 10 week treatment program and reports back to court at regular intervals on the offender's participation in the program, including compliance and behaviour. Victim input is included in the progress reporting, usually every three months. Sentencing is imposed once the treatment plan is completed (usually six to nine months later).[105]

The Yukon Territory's early intervention stream is intended to encourage more disclosures of domestic violence, to hold offenders accountable in a meaningful way, to reduce the high "collapse rate" of domestic violence cases, to provide for early intervention and offer a treatment option to offenders under close supervision of the court and treatment professionals, and to provide protection and support for victims. The key elements of the DVTO are involvement and direction from a steering committee; fast tracking of cases; as far as possible, continuity of Crown counsel, defence counsel, and judges, in order to provide consistency;

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[105] It should be noted that some jurisdictions have questioned whether the law actually authorizes a court to delay sentencing pending treatment. While the *Criminal Code* permits a Judge to adjourn for information, it is argued that the *Code* does not allow adjournment for up to a year for treatment.

complainant support from the Victim/Witness Assistance Program and the Family Violence Prevention Unit; court review at regular intervals of progress made by offenders; and court appearances scheduled at the same time each week to facilitate attendance by those involved in the assessment, treatment, and supervision of offenders.

(iii) Northwest Territories

In the Northwest Territories, diversion can only be considered for domestic violence cases in exceptional circumstances where the RCMP, local justice committee, and Justice Canada agree. The Northwest Territories' program is somewhat unusual in that the entry into the diversion program is pre-charge rather than post-charge.

(iv) American Jurisdictions

Post-arrest, pre-trial diversion, where court-ordered counselling for abusers is initiated after criminal charges have been laid, is used more frequently in the United States than in Canada. In at least some of the models, charges are dropped on successful completion of treatment.

In the Pittsburgh Domestic Violence Court, the judge may defer a decision up to 90 days to allow the offender time to complete a batterers' program as a condition of bond. If the program is completed, charges are reduced to summary misdemeanor or withdrawn. Non-compliance is a breach of the bond condition and may result in jail, a hearing on the original charges, or permission to re-enter the program.[106]

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[106] Gondolf, E. W., *The Impact of mandatory court review on batterer counseling program compliance: An Evaluation of the Pittsburgh Municipal Courts and Domestic Counseling*

In Denver, Colorado, first-time offenders, screened for eligibility, are offered the option of diversion to treatment. If they plead guilty, judgment is deferred for a year.[107]

The City of San Diego has a program of court-ordered counselling on first misdemeanor offences. Upon pleading guilty, abusers receive three year probation sentences and are ordered to participate in one of 16 certified batterers' counselling programs for a year at their own expense. When individuals complete the program, the recidivism rate is less than 15%.[108]

(v) Discussion of Diversion

Focus Groups

When the issue of diversion was discussed in focus groups, perspectives varied from those who see diversion as offering needed flexibility in the province's response to intimate partner violence, to those who fear it will undermine the intent and impact of the Framework. While some participants assumed that victims' support workers and transition house workers would be opposed to any consideration of diversion (and this assumption might be accurate in some cases), in one focus group, those involved with victims' support/transition houses agreed

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Center (Indiana, Pa: Indiana University of Pennsylvania, Mid-Atlantic Addiction Training Institute, 1998), online: http://www.iup.edu/maati/publications/PCCDExecSum.html, cited in Moyer, *supra* note 99.

[107] United States, Department of Justice, Office of Justice Programs, National Institute of Justice, *Batterer Intervention Program: Program Approaches and Criminal Justice Strategies*, by Healey, K. & Smith C. with O'Sullivan, C. (1988), as reported in Ontario, Ministry of the Solicitor General, *Domestic Violence Justice Strategy – Partner Assault Response (PAR) Programs: An Overview* (21 July 2000), cited in Moyer, *supra* note 99.

[108] *Supra* note 67.

that it would be worthwhile exploring diversion, not in place of, but in addition to, the Framework.

The chief arguments offered for and against such an approach were:

Against

- diversion programs should not be contemplated until the Framework has been fully and consistently implemented, which is not yet the case. Concerns were expressed that the necessary philosophical or cultural shift in practice had not taken place, particularly at the Public Prosecutions level, to ensure that the objectives of the Framework policy are consistently met, and until then, diversion would simply allow a way out for those who were not committed to the present policy. It was felt that introducing diversion now would be a "retrograde step," likely to undermine the Framework;

- with some approaches to diversion, a criminal charge may be stayed or dropped on successful completion of the program. Some were concerned that the lack of a criminal conviction would frustrate efforts to identify repeat offenders and ensure public safety;

- the fear was expressed that victims would be pressured to consent to diversion, inappropriately placing the onus on victims again and defeating the purpose of the mandatory charging policy;

- diversion would seem to minimize the extent of violence that is happening;

- diversion could not work unless there were adequate resources, and also adequate monitoring of how the discretion to refer cases to diversion was actually being used. Given that there are insufficient resources to support the present response to domestic violence, and given that the Public Prosecution Service has not completed its own internal audit, doubts were expressed as to whether either of these factors, necessary for success, would actually exist; and

- diversion programs might have difficulty responding appropriately to the underlying power imbalances inherent in abusive relationships.

For

- a "one size fits all" approach is not feasible for a problem as complex and multi-faceted as spousal violence. While the pro-charge, pro-prosecution policy should still remain the mainstay of the province's response to domestic violence, flexibility is needed to respond effectively to those family situations which are not likely to be served well by the criminal justice system;

- the criminal justice system is an unwieldy instrument to address a social problem that could be better solved outside the court;

- processing a charge through the criminal justice system can take a long time. Victims need to be able to get on with their lives, and it is preferable that the offender admit responsibility early on, and have immediate access to counselling;

- the fact that Crowns have no discretion to stay charges involving more minor incidents, or incidents where a victim truly does not wish to proceed has resulted in a desensitization of Judges;

- a diversion program might alleviate some of the pressure on victims who do not wish to proceed through the criminal justice system, and because the decision of whether or not to refer a case to diversion would rest with the Crown, the onus would still be lifted from victims;

- in this setting, more accuseds might be persuaded to accept responsibility for their actions; and

- women who do not want to go through the criminal justice system may be unwilling to call the police for protection; such women might be more willing to do so, if a diversion option existed.

Public Prosecution Service Submission

While recognizing that the use of the criminal law is an "essential first step" in responding to family violence, the Public Prosecution Service stated in its written submission that some Crowns would

> like to see a carefully controlled trial of selected family violence cases in an alternative resolution program similar to the restorative justice program....That would require a step away from the pro-charge, pro-prosecution policy for every case to a more flexible policy which would emphasize the importance of repairing the harm done to people who choose to continue their relationship in the aftermath of family violence.[109]

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[109] *Supra* note 72 at 2.

Such an approach would, the submission suggests, allow for a faster, more effective response, and increase victim satisfaction with the justice system. Entry into the diversion program as proposed in the Public Prosecution Service submission would occur only post-charge, and the decision would lie with the Crown. Furthermore, the administrator of the diversion program could ask a Crown to reconsider a referral. Diversion would be considered only where the victim had suffered no bodily harm, and where the accused accepted responsibility for his action. As well, an accused would be eligible only if the following criteria were met: no criminal conviction of any kind in the past 5 years; no prior convictions or discharges for offences involving violence or threats; no outstanding criminal charges; and no prior referrals to the domestic violence diversion program. Furthermore, a referral would require that the victim and accused, after separate counselling, agreed to diversion, and that, in the opinion of the Crown, the referral would be consistent with the protection of society, there was sufficient evidence for prosecution, and the prosecution was not barred by law.

It was recognized in the Public Prosecution Service submission that such an approach would require an ongoing training commitment from Public Prosecution Service to ensure that all Crown Attorneys are well informed of the dynamics of domestic abuse cases, and that the diversion program would need adequate staffing within a well-structured organization.[110]

(g) Conclusions and Recommendations Regarding Diversion

In several Canadian jurisdictions, domestic violence cases which meet certain criteria may be referred to a diversion program. Other provinces, including Nova Scotia, explicitly exclude cases involving intimate partner violence from those eligible to be considered for diversion or "alternate measures." Some of the recent literature suggests that a pro-prosecution policy, amplified by diversion in certain limited circumstances, may provide a partial answer to the dilemma of attempting to treat intimate partner violence like the crime it is, while at the same time affording some recognition of autonomy for victims who do not wish to follow through with the criminal justice process. This issue also arose in a number of the focus groups, with some participants strongly advocating adding a diversion component to the Framework, others as adamantly opposed to such a move, and others seeing both sides.

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[110] *Supra* note 72 at 5, 10.

It seems that there are risks either way. Handling some cases of intimate partner violence other than through the standard criminal justice process allows for the possibility that victims will be increasingly disempowered. It could become too easy for the government to avoid allocating the resources needed for full implementation of the Framework, or for Crowns who have an overload of cases, or who have never fully "bought into" the Framework philosophy, to shunt files into the diversion process at the least hint of a victim's reluctance to proceed. Further, because there has never been complete implementation of the Framework, in terms of on-going training for justice personnel or sufficient victim support, it is arguable that we do not actually know the optimal results that could be gained from a pro-charge, pro-prosecution policy supported by extensive victims' services.

On the other hand, there does seem to be some logic to the argument that, given the complexities of intimate partner violence and the various choices that victims may wish to make, it is unlikely that any one policy could serve the needs of all victims. Thus, it may be that a rigid adherence to a pro-prosecution policy risks disempowering the victim in instances where a victim has come to an informed, voluntary conclusion that prosecution will not assist her in achieving the goals she has identified for herself. **It is recommended therefore that the Department of Justice initiate a diversion pilot project for intimate partner violence, at one site in the province. Such diversion should only be available after a charge has been laid.[111] It is further recommended that the decision to refer an offender to diversion should be made by the Crown, in conjunction with the officer who laid the charge, and "[o]nce a referral has been made the head administrator of the program should be able to request that the Public Prosecution Service reconsider a recommendation."[112]** Those who entered the diversion program would enter into an agreement that presumably would include terms such as a promise to refrain from further violence and an agreement to undergo counselling relevant to intimate partner violence, as well as other counselling (such as for substance abuse) as needed in individual cases. Failure to adhere to the diversion agreement would result in the case being returned to the standard prosecution stream. If this model were followed, a decision would still need to be made as to whether or not successful compliance with the diversion agreement would still lead to a criminal record (with the compliance taken into account in sentencing).

In order for a diversion pilot project to avoid undermining what gains have been achieved thus far through the Framework, it is recommended that such an initiative should be undertaken in accordance with the following guidelines:

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[111] This would be in keeping with the Adult Diversion Program currently established in Nova Scotia for certain other offences.

[112] *Supra* note 72 at 5.

- **introduction of a pilot project would be in addition to, rather than in place of, a firm government commitment to allocating sufficient funding to allow effective implementation of the Framework;**

- **the site for the pilot project should be chosen carefully. Diversion should only be initiated in a region where there is already strong support for the pro-charge, pro-prosecution philosophy of the Framework, and where it seems likely that justice personnel and the community could work closely together in providing appropriate treatment and monitoring for the perpetrator and support for the victim. Acceptance of the Framework philosophy seems to vary from region to region. While Cape Breton is not the only region to demonstrate firm commitment, it seems to be unique in its combination of commitment to the Framework and superb relationships among those who work with issues relating to intimate partner violence, whether within the justice system or within the community. It is recommended therefore that Cape Breton would be the logical place to introduce a pilot project on diversion;**

- **the pilot project would have to receive sufficient funding for an adequate organizational structure, and enough counselling/treatment programs would have to be in place for referral of perpetrators going through diversion;**

- **the pilot project would have to be monitored, and measured against stated goals, in order to determine whether the use of diversion should be expanded to other sites;**

- **critical aspects of developing a pilot project would include developing appropriate criteria for assessing which cases might be considered for diversion, training Crowns involved with the project in the consistent application of those criteria, and training victims' support workers to assist victims in making voluntary and informed choices between diversion and the standard prosecution of offences. In developing criteria, close attention should be paid to those jurisdictions that are already using diversion in the context of intimate partner violence, and any evidence from those jurisdictions as to the appropriateness of the criteria in place;**

- **at a minimum, the following criteria should be met before a case involving intimate partner violence would be considered for diversion:[113] the offender has no prior**

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[113] These criteria are taken primarily from the Public Prosecution Service submission, *supra* note 72 (Appendix G). Guidelines from some other jurisdictions are more restrictive. For instance, the British Columbia policy on Violence Against Women in Relationships states that alternative measures are to be used only in "exceptional circumstances." Thus, the British Columbia criteria include the following: "Alternative measures shall not be recommended unless the [Alternative Measures] Contractor believes that the incident that gave rise to the referral is isolated, out of character for the offender and is not part of a history of violence" [British Columbia, Ministry of Attorney General, Corrections Branch, *Guidelines for Alternative Measures Contractors:*

conviction or discharges for offences involving violence or threats; no criminal convictions of any kind for the proceeding 5 years; no outstanding criminal charges; and no previous referrals to diversion for charges involving intimate partner violence; no bodily harm was inflicted on the victim; the victim, after independent counselling[114], agrees to the use of diversion; and the offender takes responsibility for his actions, has consented to the use of diversion, and is cooperative; and

- **an on-going Public Prosecution Service commitment to training would be required, to ensure that all Crown Attorneys are well aware of the goals and philosophy of the Framework for Action and well aware of the dynamics of intimate partner violence.**

(h) Specialized Domestic Violence Courts

In a number of focus groups, the issue of specialized domestic courts was raised in discussions of the prosecuting of charges involving intimate partner violence. Several jurisdictions have established or are beginning to establish specialized domestic violence courts, usually with designated Crowns, Judges, and sometimes, victims' support staff. The interjurisdictional comparison found significant support for specialized courts, with the proviso that sufficient resources must be dedicated to them in order for the courts to work.

(i) Winnipeg, Manitoba[115]

The Winnipeg Family Violence Court, the first of its kind in Canada, came into existence in September of 1990, to handle spousal, child and elder abuse cases. Between 1990 and 1997, 23,000 cases were dealt with by the Court, of which 89% were spousal abuse, 10% child, and 1%

Referrals for Offences Involving Violence Against Women in Relationships (2000) at 3].

[114] Such counselling should include information on possible outcomes if the case were prosecuted through the courts.

[115] See *Statistics Canada, supra* note 1 at 45-47.

elder abuse. The number of spousal abuse cases rose dramatically in its first four years of operation, to level off thereafter.

The Winnipeg model is based on five components: a "Zero Tolerance" pro-arrest policy; a women's advocacy and child victim witness program for victims of family violence; a specialized prosecutorial unit of 11 Crowns; specially designated court rooms and dockets for intake, screening court and trials; and a special probation unit to deliver court-mandated treatment programs.

The goals of the specialized court are to expedite court processing; increase victim cooperation and reduce case attrition; and provide appropriate sentencing that would protect victims through appropriate sentencing, such as treatment for abusers and offender monitoring through probation supervision. There is evidence to suggest the Court has had some success with two of these goals. Regarding sentencing, the number of cases resulting in probation supervision tripled and those resulting in jail sentences doubled, while fines and conditional sentences declined in the first two years of operation. Court-mandated treatment (for abusive behaviour) was a condition for about 25% of all persons sentenced in the Court. Court processing time averaged three months despite significant increases in case volumes. Case attrition rates declined initially, then rose to level off at about 47% after four years of operation.[116]

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[116] *Supra* at 49.

(ii) Ontario[117]

In 1997, Ontario introduced several specialized courts for domestic violence cases as pilot projects in Toronto.[118] There is now a plan to expand specialization throughout all court jurisdictions in Ontario.

The objectives of the Ontario model are to establish a coordinated prosecution which emphasizes the gathering of solid evidence to support a vigorous prosecution and reduce reliance on victim testimony (e.g. 911 tapes, medical reports, witness testimony, audio or video-taped victim statements), provide better support to victims throughout the criminal justice process, and hold offenders accountable for their behaviour if they are found guilty.

As of February 2000, approximately 4500 cases had been processed through either these specialized courts or the early intervention diversion model described above–76% in the Prosecution sites and 24% in the Early Intervention sites–with the result that 22% of the cases were withdrawn and 69 % resulted in guilty disposition (72% at the early intervention sites and 68% at the prosecution sites).

Following the pilot project in Toronto, specialization is now being expanded throughout Ontario, with the exact mode of delivery depending on the size of the community. In large sites with designated staff, the courts will have:

- active Domestic Violence Court Advisory Committees;
- cultural interpreters;

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[117] *Statistics Canada, supra* note 1 at 47-48.

[118] As part of this pilot project, Ontario also introduced the early intervention stream at several sites, as described in the section above on diversion, *supra* at 58.

- police services to develop and maintain procedures for undertaking and managing investigations into domestic violence that address enhanced investigative procedures;
- designated Victim/Witness Assistance Program staff specially trained to give support and information to victims;
- designated Crowns specially trained to prosecute to produce consistency and continuity;
- specialized processes for dealing with domestic violence cases to ensure effective coordination of resources;
- specialized counselling programs for abusive partners and for victims; and
- specialized processing to expedite cases.

In medium and small rural sites, the ingredients will be similar but fewer. Furthermore, in these areas, rather than having staff designated solely for a domestic violence court, specially trained staff will be available.

(iii) Calgary

Calgary has recently implemented a domestic violence court on a five year pilot basis. The core elements, as described in the court proposal, are as follows:

- expansion of the specialized Domestic Conflict Unit within Calgary Police (with emphasis on collecting evidence beyond the victim's testimony to enhance the quality of investigations);
- creation of a specialized unit within the Crown Prosecutor's Office (which determines whether a charge proceeds and which will not reduce a charge unless "the ends of justice are served thereby");
- Duty Counsel available to the accused through Legal Aid to expedite proceedings and participate in pre-court conferences on behalf of the accused;
- Legal Aid advice available to the victim through a staff lawyer, within 24-48 hours of an incident. This includes advice on divorce, custody, and matrimonial property matters as well;

- a specialized first appearance docket court that will expedite family violence cases with specialized prosecutors and Judges;

- new victims' support services called Victim Advocates to initiate contact with a victim immediately following the arrest of the accused and offer a continuum of support services throughout the criminal process, including information about case status and notification of changes, court accompaniment, communication of the victim's perspective in a pre-court conference with the Justice Coordination Unit, education of victims about risk management and safety planning, and referral of victims to community resources;

- a specialized Community Corrections Probation Unit that focuses on victim safety and offender accountability, prepares Pre-sentence Reports, reports breaches of probation terms to the court, reviews the court docket every morning to check for offenders already on probation, monitors any accused released on pre-trial conditions, and provides the court with a risk assessment regarding the potential for future violence by the offender. Although designated probation officers were originally envisioned, this has not materialized;

- greater focus on early access to and increased availability of court-ordered treatment programs for the offender that are culturally appropriate, accessible, and affordable. All programs must place victim safety as the priority and meet established professional standards (there are four agencies in the community that provide individual and group counselling for abusive men, their partners, and children). Referral to treatment can occur within 48 hours on an admission of guilt by the offender;

- individual and group counselling services for children and adolescents who witness family violence or who are aggressive themselves;

- coordinating protocols (with 52 agencies);

- coordination by the Calgary Justice Working Committee;

- cross-sector training to ensure implementation and compliance;

- thorough evaluation of the court;

- child welfare involvement: referrals are made in every case of domestic violence with children; and

- forensic psychiatry to help identify any accused who is mentally ill.

A unique feature of the Calgary Court is a pre-court conference chaired by Crown counsel which brings together the Crown, defence counsel, probation, Victim's Advocate, and police to share and coordinate relevant information to be brought before the court. Frequently, cases can be resolved, a sentencing plan can be agreed upon, and a joint submission made to the court by Crown and defence counsel. Risk assessments will be completed by police and community agencies and made available to the court to assist in determining the release of an accused and conditions. Information concerning prior breaches of court orders including judicial interim release are made available to the court. Many cases are resolved on the day of the conference. The offender, upon admission of guilt, can be "fast tracked" to a treatment program within 48 hours.

(iv) Other Canadian Jurisdictions

At least two other Canadian jurisdictions are also moving toward some degree of specialization. The Yukon Territory, as part of its Domestic Violence Treatment Option, discussed above in the section on Diversion, sets aside a half day each week to hear domestic violence cases on an expedited basis. Apparently, a municipal court in Montreal also provides specialized hearings of intimate partner violence cases; however, little information on that court was obtained during the interjurisdictional review.

(v) San Diego Domestic Violence Policy/Protocol

The County of San Diego has established specialized units in the City Attorney's office, the District Attorney's office, and the County Probation Department in an effort to coordinate and improve response to victims of domestic violence throughout the County. The units are a product of the San Diego Domestic Violence Task Force, formed in 1989, now the Domestic Violence Council, a body comprised of about 40 agencies.

As noted above, San Diego has a diversion program of court-ordered counselling, for offenders who plead guilty on a first misdemeanor offence involving domestic violence. In those cases where the accused does not plead guilty, the decision to prosecute is made on the basis of evidence available, independent of victim wishes. Victim Services provides support and notification to victims.

The Domestic Violence Unit within the City Attorney's Office, to which 90% of all criminal domestic violence matters are referred, has a prosecution protocol which includes "vertical prosecution": the assignment of a case to one attorney from screening to completion, for continuity. An Automated Case Tracking System tracks cases once they enter the office and domestic violence cases are visibly marked and numbered.

(vi) Focus Group Discussion

Although the idea of specialized domestic violence courts, with specialized prosecutors, was not a major topic of discussion within focus group meetings, it was raised by a number of participants. Where the issue was discussed, there seemed to be general agreement that specialized units could work in larger centres, but would be impractical in smaller communities or rural areas. In its written submission, the Public Prosecution Service recommends that resources should be directed toward "[c]ourts exclusively dedicated to dealing with domestic violence cases."[119]

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[119] *Supra* note 72 at 10.

(g) Conclusions and Recommendations Regarding Specialized Courts

As noted above, a number of jurisdictions in Canada and the United States now have specialized courts for cases involving intimate partner violence. While the details of such courts differ, it seems that most involve the use of specially trained prosecutors and judges, and a victims' support component.

Even in communities where a fully specialized court with separate staff may not be possible, several jurisdictions are attempting to develop feasible options. For instance, in Ontario, domestic violence courts are being established in larger municipalities, while in smaller communities the focus will be on providing specialized training for designated Crowns and victims' support workers, and a specialized process to expedite cases. As noted above, in the Yukon Territory, a half day of court each week is set aside to deal with intimate partner violence cases on an expedited basis.

The Women Abuse Council of Toronto conducted a court watch study (1999) and reported that specialized courts are more successful in prosecuting domestic violence cases; have a lower rate of withdrawals, dismissals, and peace bonds; result in a higher rate of guilty dispositions (both guilty pleas and verdicts in court); and have a higher rate of victims appearing in court.[120] According to the 1999 court watch study, specialized domestic courts are more effective than the standard criminal justice court in the prosecution of intimate partner violence.

Given the extent to which focus group discussion stressed the need for ongoing training, and consistency of approach, in order to ensure effective implementation of the Framework, it seems logical that a specialized court, with specially trained Crowns, judges and victims' support workers, would be better able to provide continuity and knowledgeable application of Framework policies. On the other hand, proposals for specialized courts must take account of differences between larger urban centres and small towns or rural areas. Presumably a fully specialized court could be more easily introduced where court sits each day, there are a number of Crowns and judges involved, and a higher number of cases involving intimate partner violence, than in an area where court sits less frequently and fewer personnel are involved.

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[120] Woman Abuse Council of Toronto. July, 1999: *Court Watch – Executive Summary.*

It is therefore recommend that the Department of Justice undertake detailed study of the organization and operation of specialized domestic violence courts in other jurisdictions and then initiate a specialized domestic violence court as a pilot project in the Halifax Regional Municipality. This pilot project should be carefully monitored, and its performance measured against stated goals such as expediting the court process; increasing victim cooperation and reducing stay rates; prosecuting charges involving intimate partner more effectively; providing better support for victims throughout the process; and assessing appropriate sentences. If the pilot project shows that a specialized court is better able to meet these goals than the present system, it is recommended that the Department of Justice expand such specialization to those sites throughout the province where the incidence of intimate partner violence cases, and the numbers of court personnel would make this feasible.

It is also recommended that for communities too small to warrant a fully specialized court, the Department of Justice implement measures to provide some degree of specialization within the current system. Such measures might include setting aside some court time weekly to provide for expedited hearings, and providing designated Crowns and

victims' support workers with more extensive training. It is recommended that, in designing specialization measures, the Department of Justice should seek guidance as to what does or does not work from other jurisdictions which are already experimenting in this area.

As is the case with the present court system, it seems likely that a major factor in the success of specialized courts or specialized processes would be the provision of adequate victim support. Without such services, attempts at specialization could well founder.

3. Courts

(a) The Framework Requirements for Courts

The Framework requires that all cases of a criminal nature, including peace bond applications and common assault charges, be heard by the Provincial Court and that Clerks of the Court give priority to family violence cases and peace bond applications to ensure that they are heard as soon as possible.[121] The Framework also provides that:

> The Minister of Justice will make representation to the Chief Judge of the Provincial Court and the Chief Justice of the Supreme Court to emphasize the need for denunciation and deterrence in sentencing of perpetrators of family violence and to gain the support of the Judiciary for expeditious processing of these cases.[122]

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[121] *Supra* note 10 at 4.

[122] *Supra* note 10 at 4.

(b) The 1999 Evaluation Report

(i) 1997 Consultation Sessions

In the May to June 1997 consultation sessions, court staff noted that Framework training had changed their attitudes and that cooperation among different components of the justice system had improved. Court administrators indicated that there was a heavy volume of peace bond applications, that many complainants needed help completing the application, and that there was some difficulty providing this service to complainants.[123] Concern was expressed by Court staff about peace bonds being sought where there were grounds for the laying of a charge, about the number of frivolous peace bond applications, and the lack of understanding of the grounds for obtaining a peace bond (fear for safety).[124] As well, a wide variation was reported in relation to the screening of peace bonds, with Justices of the Peace in some areas screening applications and rejecting those where grounds didn't exist, and Justices of the Peace in other areas being told to take all applications and to leave screening to the judge.[125] Training for Justices of the Peace was seen as a means of eliminating inconsistencies.

Court staff indicated that victims were being informed of the community resources available either by Court staff or through referral to Victims' Services.[126] With respect to hearing times, Court staff indicated that it was possible to set the first hearing within five to seven days, except in rural areas. Where a second hearing was required the delay could be a few months.[127]

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[123] *Supra* note 14 at 31.

[124] *Supra* note 14 at 31.

[125] *Supra* note 14 at 32.

[126] *Supra* note 14 at 32.

(ii) 1996-1998 Data Analysis

The 1996-1998 statistical analysis, which the 1999 Department of Justice Monitoring Committee had available to it, showed that the average and median times elapsed from the first court appearance to the final outcome had declined significantly between the period April to August 1996 and the period February to June 1997, from an average of 178 days in April to August 1996 to an average of 141 days in February to June 1997.[128]

In terms of court outcomes, the data analysis for the period April 1996 to August 1998 assessed court outcomes for the period April 1, 1996 to March 31, 1997 by manually linking detailed incidents reported to police with data held on the Justice Oriented Information System (JOIS) for 459 cases.[129] The data analysis suggested that following the implementation of the Framework, more charges, and more serious charges, were being laid.[130] As well, the conviction rate of 65% following adoption of the Framework was significantly higher than the conviction rate of 57% prior to the adoption of the Framework, as documented in the 1995 Tracking Study.[131] Moreover, the 65% conviction rate in spousal/partner violence cases was comparable to the conviction rate for similar offences (60%) in adult provincial courts over a similar time frame.[132]

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[127] *Supra* note 14 at 32.

[128] *Supra* note 14 at Appendix D, 27.

[129] *Supra* note 14 at Appendix D, 19.

[130] *Supra* note 14 at Appendix D, 19.

[131] *Supra* note 14 at 15 and Appendix D, 21.

Of the 459 court cases looked at in the data analysis, there had been final dispositions in 437.[133] There had been 285 cases in which there had been guilty findings.[134] Sentencing information was available for 257 (98%) of them.[135] The most common serious disposition in these cases was probation at 57%, followed by custody at 22%, with fines being the most serious disposition in 11% of the cases, conditional sentences in 8%, and other in 2%.[136] When selected results of the 1996-1997 period were compared to the results of the 1995 Nova Scotia Family Violence Tracking Project, they showed that the rates of incarceration had declined, while the number of cases disposed of by fine had increased and rates of disposition by probation had remained about the same.[137] With respect to probation, the use of conditions requiring spousal abuse program referral, a non-association clause, or substance abuse program referral, increased significantly following implementation of the Framework.[138]

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[132] *Supra* note 14 at Appendix D, 21.

[133] *Supra* note 14 at Appendix D, 26.

[134] *Supra* note 14 at Appendix D, 27.

[135] *Supra* note 14 at Appendix D, 27.

[136] *Supra* note 14 at Appendix D, 28.

[137] *Supra* note 14 at 18.

[138] *Supra* note 14 at 18.

Probation[139]	1995 Report	1996 Report
% of probationers with a spousal abuse program referral	35%	44%
% of probationers with a non-association clause	23%	53%
% of probationers with a substance abuse program referral	19%	47%

(iii) Recommendations of the 1999 Review Committee

The 1999 Department of Justice Monitoring Committee made very few recommendations in relation to courts. It did note that some key justice workers, including Justices of the Peace, had not received training during the initial phase of the Framework for Action and therefore recommended that they receive training to make them aware of their responsibilities and accountability.[140]

As well, in light of the fact that many justice workers and community agency representatives who participated in the 1997 consultations had expressed frustration with the sentencing practices of the judiciary, the 1999 Evaluation Report recommended that the Minister of Justice bring the report to the attention of the Chief Justice of the Province and the Chief Judges of the Provincial and Family Courts.[141] It also emphasized that "[m]onitoring of the justice system response to spousal/partner violence was seen as a critical component of the accountability framework for the initiative," but that an ongoing monitoring process had not been fully implemented by a number of components of the justice system including Courts and

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[139] *Supra* note 14 at 18.

[140] *Supra* note 14 at 40.

[141] *Supra* note 14 at 41.

Registrars.[142] The 1999 Evaluation Report therefore "recommended that the Minister of Justice require each component of the criminal justice system to formally restate their commitment to the Framework for Action Against Family Violence and articulate means by which they will monitor adherence to the Framework policies."[143]

(c) 2001 Review

(i) Lack of Statistical Information on Court Charges and Outcomes

Unfortunately, the current reviewers are at a disadvantage in comparison to the 1999 Department of Justice Monitoring Committee in so far as there has been no ongoing data collection or analysis since the data collection and analysis that was completed in August 1998. This means that we had no statistical information on charges laid, on time elapsed from incident to first appearance or from first appearance to final outcome, on conviction rates, or sentences imposed. Without this information it is very difficult to assess the accuracy of comments made by focus group participants on the progress of the justice system in relation to family violence. Many stakeholders who participated in the focus groups expressed concern about the absence of overall monitoring to track progress on family violence. Since family violence is a very serious ongoing problem, participants viewed the tracking of justice system performance as an important responsibility of government.

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[142] *Supra* note 14 at 42.

[143] *Supra* note 14 at 42.

(ii) Peace Bonds

Once again, as in the consultations for the 1999 Evaluation Report, Court workers expressed concern about the volume of peace bond applications, about their ability to assist all complainants making applications, and about the use of peace bonds in situations where charges would be appropriate. Provincial Court Judges reiterated these concerns. Continuing inconsistencies in the practice of Justices of the Peace were noted, as was the concern that Justices of the Peace are in need of training.

(iii) Hearing Times

As in 1999, Court workers reported that the first appearance of the accused can usually occur in five days but that a subsequent appearance may take several months. On the one hand, we heard from some Court administrators, Crown prosecutors, and others that the courts are backlogged and that delays are inevitable, while other Court administrators and Crown prosecutors expressed the view that family violence cases could be expedited without adding any additional resources to the system, simply by making these cases a priority.

In the submission from the Public Prosecution Service prepared for the purpose of this review, the Public Prosecution Service noted that:

> delay is a significant problem in the prosecution of spousal/partner violence cases, and is a major contributing factor in the failure of some of these types of prosecutions.[144] For the most part, spousal/partner violence cases are not "fast-tracked" through the justice system unless the accused has been remanded into custody pending the resolution of the case, which is not the norm.[145]

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[144] *Supra* note 72 at 7.

[145] *Supra* note 72 at 7.

The Public Prosecution Service also indicated that unless the accused has been detained in custody, it can be as much as six weeks from the time the incident occurs until the matter is first arraigned in court, and that as a result of adjournments (which are not uncommon), the setting down of trial may not occur until as much as five months after the incident occurred.[146] The Public Prosecution Service also identified the need for substantial additional resources to be directed toward the training of police and Crown prosecutors, to additional staff for Victims' Services, and to Courts, to legal aid and to alternative dispute resolution to enable the policy objectives of the Framework to be met.[147]

In a meeting with Provincial Court Judges from around the province, it was clear that in some areas, domestic violence cases are given priority, while in other areas they are not. Some Provincial Court Judges "don't feel comfortable giving priority to domestic violence cases," while other judges leave it to the Court clerk to schedule cases on the basis that the Framework requires that such cases be given priority.

It was suggested by Victims' Services representatives that intimate partner abuse cases in rural areas might be scheduled together on the same day and that courts might co-ordinate their scheduling to facilitate the presence of Victims' Services staff to provide support for victims during court proceedings. Victims' Services staff in rural areas have large areas to cover and it is difficult for the few staff to provide adequate service to victims when several cases are being heard in different court houses in different parts of the larger area for which a Victims' Services office is responsible. Judges, however, felt that it would not be feasible to schedule intimate partner abuse cases together on the same day, given the fact that in rural areas only one day of court hearings are scheduled at any one courthouse at a time.

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[146] *Supra* note 72 at 7.

[147] *Supra* note 72 at 9-10.

(iv) Sentencing

Grave concern was expressed by victims, Victims' Services staff, other victims' service agencies, police, some Crown prosecutors, and Corrections staff about the perceived leniency in sentencing and low rates of incarceration. It was noted that the most common sentencing outcome is probation on conditions including requirements to pursue spousal abuse programs, substance abuse programs, or anger management programs.

Concern was expressed by Victims' Services representatives, transition house representatives, and men's treatment program representatives that anger management treatment is not an appropriate form of treatment for abusive men. What is required is spousal abuse treatment, and spousal abuse treatment resources are inadequate to meet the need. Probation Services has cut funding for treatment programs and many men themselves cannot afford the cost of such programs, with the result that the conditions are being breached. As well, doubt was expressed as to the capacity of Corrections staff to monitor compliance with all the conditional sentences being given. Victims perceive that offenders are breaching the conditions with impunity and that judges are desensitized to the violence experienced by victims. Participants noted the need for judges to be made aware of the treatment services available in various areas of the province and of the type of treatment that is appropriate. The need for stronger penalties was stressed by many, while opportunities for diversion were suggested by some in limited circumstances. It was suggested that similar offences in non-domestic situations get stiffer sentences than in domestic violence situations, and that there is a useful analogy to be drawn between impaired driving offences and domestic violence.

In situations where an offender had already breached a court order, victims, police, Crown and Corrections staff believed it inappropriate to continue to place the offender on a further term of probation. They felt incarceration would send a more definitive message and hold the offender accountable for his actions.

(v) Initiatives in Other Jurisdictions: Sentencing

With respect to sentencing, there are some initiatives in other jurisdictions involving the use of risk assessment tools that might be worth considering for adoption in Nova Scotia. Some jurisdictions are exploring the use of risk assessment tools in an attempt to identify those abusers who pose a higher level of risk than others, so as to assess and manage risk to victims, to assist in decisions in relation to bail and to prioritize allocation of scarce probation supervision and treatment resources. As more and more offenders are charged with spousal abuse offences, more receive sentences of probation, such that this group of offenders comprises one of the largest groups on probation.

British Columbia is using a risk assessment and management tool developed by Randall Kropp at the British Columbia Institute of Family Violence. The risk assessment tool is used to determine the appropriateness of alternative measures, which are only permitted in "exceptional circumstances" under the British Columbia Violence Against Women in Relationships Policy. The Guidelines for Alternative Measures Contractors[148] are used by Crown Counsel in British

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[148] *Supra* note 113.

Columbia to determine if cases are truly "exceptional." The screening criteria include history of violence, nature of the offence and severity of the injury, inappropriate use of power and control and alcohol or substance abuse.[149] It is interesting to note that participants in the focus groups conducted as part of the current review expressed concern about the inappropriateness in conditions of probation of referrals to anger management programs. The British Columbia guidelines provide that alternative measure plans "must *never* include conditions for behavioural intervention relating to the inappropriate use of power and control."[150] Referral to a relationship violence program is seen as appropriate.

In Alberta, Forensic Assessment Services does risk assessment for the Calgary Domestic Violence Court. As well, Alberta uses a "risk factoring tool" for decision-making at bail.

As part of Ontario's Domestic Violence Justice Strategy, police will be using a Domestic Violence Supplementary Report Form to collect data, which includes a risk assessment component.[151] Information collected is critical and will be used at various stages throughout the justice process by police, Crowns, and others.

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[149] *Supra* note 113 at 3-5.

[150] *Supra* note 113 at 5.

[151] For a further description of the risk assessment tool, questions asked, and rationale, refer to Ontario, Ministry of the Solicitor General, Policing Services Division, *A Guide to Domestic Violence Supplementary Report Form* (Toronto, Ontario: 2000).

Statistical Data

In addition to the risk assessment tools developed and used in other provinces, *Family Violence in Canada: A Statistical Profile 2000*[152] provides very useful data which could assist in the identification of risk factors and in the development of risk assessment tools for use by police, Crown counsel, and Corrections. A review of this report suggests, for instance, that: emotional abuse is a significant factor and an important part of the overall context; that young women living in common-law relationships are particularly at risk; that alcoholism and substance abuse are important risk factors; that the point at which the victim leaves the abuser is the highest risk point; that pregnancy is a risk factor; that unemployment of the accused is a risk factor; and so on.

(d) Conclusions and Recommendations Regarding Courts

Despite the Framework requirements and the recommendations of the 1999 Evaluation Report, Justices of the Peace still have not received training regarding the Framework. Delays are still a significant problem in the prosecution of intimate partner violence cases, these cases are not being given priority in the justice system, and there continues to be widespread concern about the perceived leniency in sentencing, about low rates of incarceration, and about some inappropriate program referrals in conditions of probation. **It is therefore recommended:**

- **that, in view of the important role played by Justices of the Peace, they receive training to make them aware of their responsibilities and accountability under the Framework;**

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[152] *Statistics Canada, supra* note 1.

- **that the Minister of Justice bring this report to the attention of the Chief Justice of Nova Scotia, the Chief Justice of the Supreme Court, and the Chief Judge of the Provincial Court to solicit their support for the expeditious processing of domestic violence cases; to re-emphasize the need for denunciation and deterrence in sentencing of perpetrators of family violence; to make them aware of widespread concerns about the need for sensitization of the judiciary concerning the dynamics of domestic violence, and its impact on victims; and to alert them to the need for increased awareness of the types of treatment appropriate for perpetrators of domestic violence, as well as of the availability of such programs, or lack thereof, throughout the Province;**

- **that a risk assessment and management tool be developed for use by police, Crown Attorneys, and Corrections staff to identify those abusers who pose a higher level of risk than others, so as to assess and manage risk to victims, to assist in decisions in relation to bail and sentencing, and to prioritize allocation of scarce probation supervision and treatment resources; and**

- **that the Department of Justice implement the prototype information system it developed in 1996 to collect data on an ongoing basis to track the performance of the justice system in response to family violence cases in order to support sound executive decision-making and to measure the impact of new initiatives.**

4. Correctional Services

(a) The Framework Requirements for Correctional Services

The Framework for Action states the following with regard to Corrections:[153]

- Corrections officers shall ensure that victims are informed about the terms of probation orders and conditional release and that they know how to contact corrections staff in the event of a breach of the order;

- Pre-sentence reports will include results of victim interviews, wherever possible;

- Probation officers will identify for the court the availability of intervention programs for perpetrators of family violence;...

- Victims shall be contacted when the conditional release of an inmate from custody is being contemplated (or when an inmate is unlawfully at large);

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[153] *Supra* note 10 at 5.

- Probation order conditions shall be carefully monitored and all violations reported immediately to the Crown; and
- Police shall be informed in advance of any release of an inmate who is known to be a perpetrator of family violence.

(b) The 1999 Evaluation Report

The 1999 Evaluation Report cites some instances of inconsistent application of the Framework: for instance, in some parts of Nova Scotia, safety plans were discussed with victims during preparation of the pre-sentence report; in other areas, this was seen as a task for Victims' Services. Most probation officers, on becoming aware that a probation order had been breached, informed the police and Crown; however, notification of Victims' Services was less consistent. Probation officers suggested that all domestic violence files should be flagged so that Corrections Services could apply Framework policies.

A number of those who spoke to the Committee preparing the 1999 Evaluation Report raised "serious concerns about the use of conditional sentences for spousal/partner violence offenders."[154] These concerns appear to have reflected both a suggestion that incarceration should be used more frequently for such offences[155] and a recognition that there is insufficient community supervision of probation orders:

> Probation staff were of the view that current procedures were probably not effective to monitor the offender's behaviour in the community. Community corrections staff are carrying very high caseloads and close monitoring of offenders is not possible.... [However,] [p]robation officers in smaller

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[154] *Supra* note 14 at 35.

[155] *Supra* at 85.

> communities were generally satisfied with monitoring of the offender in the community as this is done by police.[156]

Problems noted in the 1999 Evaluation Report with regard to offenders serving custodial sentences included: staff of correctional institutions were rarely notified of the fact that an offender had committed an offence involving intimate partner violence or of the existence of "no-contact" orders; not all institutions were able to monitor offender/ victim contact; smaller institutions did not provide any spousal assault treatment programs; and there were inconsistencies in practice regarding contact of victims where an offender was being considered for a temporary absence program, and regarding parole release.

(c) 2001 Review

During the present review, focus group participants did not provide a great deal of commentary on Corrections Services; however, what discussion there was reiterated two of the themes from the 1999 Evaluation Report. Victims in particular pointed out that some perpetrators are not likely to pay much attention to probation orders, particularly if the consequence of a breach of probation is simply another probation order. We also heard a number of times, from probation officers and others, that Corrections staff simply do not have enough resources to monitor probation orders effectively. Comments from representatives of community organizations included: "Corrections staff are overworked and cannot adequately supervise breaches of probation" and "Corrections are not always adequately supervising and responding to breaches of probation conditions. It seems as though some offenders are given repeated chances to breach their conditions until they are finally charged."

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[156] *Supra* note 14 at 33-34.

(d) Conclusions and Recommendations Regarding Correctional Services

Given that probation is frequently used as a sentence for crimes involving intimate partner violence, it seems particularly important that probation orders be structured, monitored and enforced so as to provide as much protection as possible for victims, and as much deterrence as possible for perpetrators. The question of whether probation should be used in a particular case, and what conditions should be attached, and the question of the appropriate sentence to be imposed for breaches of probation relate to issues raised above in the discussion of courts. However, issues of supervision and victim notification fall within the purview of Corrections Services.

Focus group discussion of Corrections Services centred on the lack of adequate monitoring due to excessive caseloads for probation officers and, to some extent, inconsistencies in the application of the Framework. This discussion would seem to highlight issues of resources and training.

It is recommended, therefore, that Corrections Services receive adequate funding so as to reduce caseloads to the point that probation officers can realistically be expected to implement the Framework requirements of supervision and notification. Implementation would include liaison with victims in terms of preparation of pre-sentence reports and discussion of safety plans; informing victims of the terms of probation orders or the date of release where a perpetrator has received a custodial sentence; close monitoring of perpetrator compliance with conditions attached to probation orders; and immediate notification of Crowns and Victims' Services when violations occur. **It is further recommended that Corrections Services staff receive training on the effective and consistent application of the Framework. Finally, it is**

recommended that procedures be put in place to flag all files involving intimate partner violence, so that Corrections Services can apply Framework policies.

5. Victims' Support Services

The term "victim support" encompasses a range of services, and does not, of itself, differentiate as to whether those services are provided by the Department of Justice, another government department, police forces, transition houses, community agencies, volunteer organizations, or a combination of all or some of these.

(a) The Framework Requirements for Victim Support

The Framework for Action states that "Safety of the victim must be the primary concern of the justice system,"[157] and outlines the services to be provided to victims of intimate partner violence:

- attend the scene of domestic violence, upon referral by the police, to provide immediate crises intervention once the alleged perpetrator has been removed, and referral to appropriate services in the community;
- communicate with victims as cases proceed through the justice system to convey details regarding the progress of the case and the status of the alleged perpetrator.

(b) The 1999 Evaluation Report

The importance of providing support for victims of intimate partner violence is recognized in the 1999 Evaluation Report, which concluded:

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[157] *Supra* note 10 at 7.

> The emotional and physical impact of spousal/partner violence is profound and victims have reported feeling doubly victimized through their involvement in what many perceive to be a hostile and confusing criminal justice process.
>
> Despite the development of protocols to lessen the reliance on victim testimony, the criminal justice system still needs the cooperation and participation of victims to successfully prosecute spousal/partner violence. The early intervention and advocacy services provided through the victim support service program were assessed as an essential component of the successful implementation of the Framework for Action.[158]

The 1999 Evaluation Report found that victims' services officers reported "a dramatic increase in their caseload due to family violence matters."[159] Although the policy developed to implement the Framework requires that victims be contacted within 2 days, the Monitoring Committee found that this did not always happen. Reasons given for this included the heavy caseload and, in some cases, difficulty in contacting the victim.

(c) Victims' Support in other Jurisdictions

According to the interjurisdictional survey conducted as part of this review, all provinces and territories offer some services for victims of intimate partner violence; what varies is the scope of the services available, and who provides the services. In most jurisdictions, a mix of government, police-based, community, and volunteer services offer some or all of the following to victims of intimate partner violence:

- advocacy and support;
- court accompaniment;
- criminal injuries compensation;

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[158] *Supra* note 14 at vi.

[159] *Supra* note 14 at 35.

- assistance with Victim Impact Statements;
- information about case status;
- victim notification;
- information and referral to other services;
- counselling, both short and long term;
- shelters/transition houses or other safe places to go in times of crisis; and
- second stage housing.

All jurisdictions have a range of women's shelters/transition houses, second stage housing, satellites, safe homes, family resource centres, and other safe places to go in times of crisis. The number of services and the funding available to support them varies widely among provinces and territories, with the least being available in the north.

(d) Existing Services in Nova Scotia

Victim support services in Nova Scotia can be divided into those provided directly by the Victims' Services Division of the Department of Justice, police-based victims' services, and services offered by community organizations (often through a combination of government funding and volunteer support).

(i) Department of Justice

Although the Framework for Action speaks of providing victims with information and referrals, the Victims' Services Branch of the Department of Justice was not identified as a separate component within the Framework. Since implementation began, however, the Victims'

Services Branch has been involved both through policy and planning at the departmental level and through the direct provision of services by victims' services workers in the regions.

Victims' Services officers attempt to make initial contact (whether by telephone or letter) with all those victims who are referred to them by police officers, Crowns, the Halifax Regional Police Victims' Service Unit, or others. During this initial contact, the victim is offered support services, such as case-specific information; an explanation of the criminal justice process; court-orientation; liaison with the police, Crown, and corrections; assistance with the Criminal Injuries Counseling program; an explanation of the Victim Impact Statement program; information about court orders (i.e. undertakings, peace bonds, probation orders); referrals to other services; information about the Child Victim/Witness program if there is a child witness involved; and to a limited extent, court accompaniment. If a victim declines support, she is invited to contact Victims' Services should she change her mind. Unless the victim is agreeable to follow-up contact, workers do not reinitiate contact with victims at various stages of the justice process in order to make renewed offers of assistance.

The Victims' Services Division of the Department of Justice also administers a provincial criminal injuries compensation program. However, because of funding reductions in the 2000 budget, the program now only pays for counselling awards. It no longer compensates for other costs associated with being a victim of crime, such as wage loss or medical and dental expenses.

When the Framework for Action was introduced, the Department of Justice also provided funding for eight victim support projects across the province, in an attempt to determine what model might work best for enhanced community-based victim support. Following evaluation, there seemed to be no consensus on this, and the Department determined that the projects overlapped with existing services. In the 2000 budget, funding for the projects was not continued.

(ii) Police-based

The Halifax Regional Police Force provides support to victims of intimate partner violence through a mobile domestic violence response team, and a victims' services unit. The mobile response team provides emergency counselling and crisis intervention at the scene of a domestic violence incident. When a police officer responds to a call which involves intimate partner violence, the officer determines whether the mobile response team should be brought in.[160] The team is called in about 50% of the time.

The Victims' Services Unit within the Halifax Regional Police Force works primarily with victims of intimate partner violence, and monitors compliance with the Framework for Action. This Unit, which consists of a Co-ordinator and two other staff, identifies all domestic violence calls received by the police on the previous day, and then attempts to contact the victim.

In 2000, the Unit opened and closed 1719 files, 1459 of which involved intimate partner violence.[161] The victim was contacted in 74% of the cases, usually by telephone. Reasons for no-contact included: the victim did not have a telephone, the telephone number was disconnected, or three calls were made with no answer.

Where the victim is reached, the Victims' Services Unit

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[160] The team is not available after 5 p.m. from Sunday to Thursday, although it is available on Friday and Saturday nights.

[161] *Supra* note 71.

- provides information on the police file (what charges have been laid, the date of the first court appearance, what will happen in court, and the meaning of any undertakings attached to the perpetrator's release from police custody);
- makes an automatic referral to the Victims' Services Branch (Department of Justice); and[162]
- makes referrals, as appropriate, to various other support services, including Bryony House, Social Services, community agencies, Legal Aid etc..

The Unit has found that most victims are very pleased to receive the information offered to them. About 5% decline any information; however, their names are still forwarded to the Department of Justice. In January 2000, the Unit attempted to initiate further follow-up, but found that it did not have the resources to handle this.

(iv) Community-based

Community-based supports for victims of intimate partner violence include nine transition houses across the province, second stage housing, a Mi'kmaq Family Treatment Centre (with two sites), six Women's Centres, and two counselling programs for abused women. Some victim advocacy, court accompaniment, and other forms of support are also provided through transition house outreach programs and community or interagency organizations.

(e) 2001 Review

Support services for victims were discussed at each of the focus groups. Victims' Services workers were seen (by others and by themselves) as having excessive workloads and insufficient resources to meet the needs of victims. However, the workers were described as doing an excellent job within the limits of their resources, and as having an excellent relationship with Crowns (although Crown referrals to Victims' Services are still inconsistent in some regions), transition houses, and others who are involved with victims of intimate partner violence.

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[162] All the Unit's intake forms are sent to the Department monthly. Initially there were some concerns as to whether information could be shared in this way; however, it was reasoned that the information would become public once the matter reached court.

Two themes emerged almost universally from focus group discussions:

- adequate support services are required both for the well-being of victims of intimate partner violence and for the effective implementation of the Framework for Action;
- if the government is serious in its commitment to the Framework for Action, more resources will have to be allocated for victim support.

Victim advocacy, education, and support were characterized by focus group participants as critical at all stages of a victim's contact with the criminal justice system. The need of this support was reflected in the experiences of victims themselves. Victims frequently spoke of the criminal justice system as being intimidating, bewildering, hostile, and ill-suited to meet their needs; however, those victims who had contact with some form of victims' support services were, with one exception, very positive in their assessment of the support services offered to them. Several focus group participants noted that victims are more likely to understand the criminal justice system and the role of the Crown if they have been in close contact with Victims' Services.

This importance of providing victim support, both in terms of a victim's general well-being, and in terms of enhancing the success of pro-charge, pro-prosecution polices, is reflected in two American studies reported by Epstein, who suggests that at least a partial answer to the question, "How can prosecutors find a satisfactory way to enhance deterrence of intimate abuse and, simultaneously, adequately protect the safety and autonomy of individual victims?"[163] may be to expand the support offered to victims throughout their contact with the criminal justice system.

One of the studies she refers to explored the impact of providing lay advocates for women leaving a transition house, and the second examined "the role of social support from family, friends, neighbors, and coworkers in determining victim follow through in domestic violence criminal prosecutions."[164] In the first study, it was found that in comparison with a control group, women provided with a lay advocate reported less physical violence and less depression and "perceived themselves as significantly more effective in obtaining community resources and assistance."[165] In the second study, those with higher levels of support were more able to co-operate with the prosecution. Epstein concludes, "Recent prosecutorial responsiveness to domestic violence cases must be accompanied by an equivalent increase in the provision of easily accessible victim advocacy services."[166]

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[163] *Supra* note 24 at 19.

[164] *Supra* note 24 at 20.

[165] *Supra* note 24 at 20.

[166] *Supra* note 24 at 21. Epstein should not, however, be understood to suggest that the only reason for providing victim support is to ensure co-operation with the Crown, or that with the provision of such support, complete and rigid adherence to a pro-charge, pro-prosecution policy would be possible, or even desirable:

> These results [of the studies] are quite exciting. They indicate that in many cases, an increase in victim support from family, friends and trained personnel can be enough to empower victims to exit the cycle of violence. Advocacy services apparently reduce some victims' dependency on the criminal justice system by helping them find the strength to escape on their own. And for those who need prosecutorial intervention, the presence of an advocate or supporter enables them to better assert themselves in gaining the help they need. By amplifying victims'

In the focus groups, widespread concern and frustration was expressed over the lack of resources for victims' support. Many participants cited the withdrawal of funding for the Victims' Support/Advocacy Projects and the Family Violence Prevention Initiative as evidence of a lack of government commitment to reducing intimate partner violence. Concern was also expressed about the trend of "'downloading' victim services to the community" without providing community services with sufficient resources to respond.

(f) Conclusions and Recommendations Regarding Victim Support Services

The literature on intimate partner violence, the results of the interjurisdictional survey, and the insights provided by focus group participants all indicate that there are a range of services needed in order to provide support for victims. These would include: immediate crisis intervention at the time violence occurs; crisis housing for those victims who do not feel safe

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> voices, advocates can help the government better respond to individual concerns. Advocates also help the government to better discern those cases in which the survivor seeks to drop charges because of a considered decision that the course of action is best for herself, her family, and the larger community to which she belongs. Certainly, domestic violence is a crime against the state and generally should be treated as such; but victim advocates could be a key to transforming one-size-fits-all prosecution policies into responses that are also tailored to the concerns of individual women. (at 20)

Similarly, although Manitoba is noted for its Women's Advocacy Program, this program does not appear to have significantly reduced the number of victims who are reluctant to proceed with criminal charges. In Manitoba, when a victim expresses reluctance to proceed or asks the Crown to drop the charge, a referral is made to the Women's Advocacy program to ensure that the victim is provided with support and information before a decision is made by the Crown. Given that the stay rate in Manitoba is approximately 45%, it appears that the effectiveness of the Advocacy Program lies in assisting women to understand the consequences of their request for a stay, and assisting the Crown to determine where it is appropriate to agree to such a request, rather than in persuading all women that their best choice is to proceed through the criminal justice system.

remaining in their own homes; where charges are laid, information regarding the progress of the file through the justice system, as well as court orientation and accompaniment, counselling and advocacy; and assistance for women wishing to access other community services.

The available evidence suggests that adequate victim support is essential not only for helping victims and their families deal with the experience of intimate partner violence, but also to ensure effective implementation of a pro-charge, pro-prosecution policy. In fact, it would seem that a lack of victim support can almost guarantee higher rates of reluctant witnesses and mutual Crown/victim disenchantment, which in turn undermine the possibility of an effective criminal justice response to intimate partner violence. Even if a pilot project on diversion were to be introduced, as is discussed in the section on Crowns,[167] victims' services would be equally essential for that model; along with objective criteria regarding the extent of the violence, past offences, etc., a case would be considered appropriate for diversion only if the victim were in full agreement. Victims would require counselling and support to ensure that such agreement was voluntary and informed.

It also appears evident that effective victim support requires collaboration within government, among various community organizations, and between government and communities.

Therefore, it is recommended that the Department of Justice enter into discussions with those within the Department charged with implementation of the Framework, other government departments, and the community, in order to determine the most appropriate and efficient ways of delivering the services needed for full victim support, and it is

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[167] *Supra* at 56.

recommended that the government commit sufficient funding to allow for such delivery. It would appear that an entity such as the Family Violence Prevention Initiative would be instrumental in facilitating the necessary discussions, and then ensuring that the services provided did in fact work together to provide comprehensive victim support. **It is therefore recommended that the Family Violence Prevention Initiative be reinstated.**

6. Training

(a) The Framework Requirements for Training

The Framework for Action Against Family Violence required comprehensive training for all justice workers to help them understand the dynamics of family violence, their own responsibilities, and the role of other justice workers and community agencies.[168] Community agencies with experience in dealing with both victims and perpetrators of family violence were to be involved in the development and delivery of the training to assist justice workers in understanding the dynamics of family violence and to help build linkages between the justice system and community agencies.

By June 30, 1997, approximately 3000 justice workers had received a standardized two-day training program delivered through a train-the-trainer model which involved a co-ordinator, Ray Cusson, and fifty-nine individuals from police agencies, the Public Prosecution Service, Court Administration, Correctional Services and Victims' Services. These volunteers had an intensive five-day training session in March 1996 to prepare them to deliver the material to their peers. The training curriculum included the dynamics of spousal/partner violence, elements of the Quincy model, adult learning theory, community resource availability, and the operational policies for responding to spousal/partner abuse. The curriculum was developed in consultation with all components of the justice system and with representatives from community agencies who also delivered a component of the training.

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[168] *Supra* note 10 at 6.

(b) The 1999 Evaluation Report

Participants who evaluated the training sessions responded very positively,[169] and in the consultation sessions held from May to June 1997 with 150 justice workers in Nova Scotia, many participants felt that the training program was the most important critical success factor.[170] However, the training was not ongoing and the 1999 Evaluation Report found that there had been no comprehensive approach to ensure that new employees received the necessary training or that those already trained received further training.[171] The 1999 Evalution Report also found that some key justice workers, particularly Justices of the Peace and per diem Crown prosecutors, but also judges, had not received training during the initial phase of the Framework for Action.[172] Concern was expressed about the "backsliding" of some justice workers and that lack of ongoing training might contribute to a decline in charge rates for spousal/partner violence.[173] The 1999 Evaluation Report recommended that "representatives from all components of the justice system, together with interested community agencies, develop a strategy for delivering an ongoing training program in order to ensure that all justice employees are familiar with the Framework policies and procedures."[174] Noting the responsibility of the Court for the training agenda of the judiciary, the 1999 Evaluation Report recommended that "Minister of Justice bring this report to the attention of the Chief Justice of the Province and the Chief Judges of the Provincial and Family Courts."[175]

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[169] *Supra* note 14 at 4.

[170] *Supra* note 14 at vi.

[171] *Supra* note 14 at 40.

[172] *Supra* note 14 at 40.

[173] *Supra* note 14 at 40.

(c) 2001 Review

In the focus group discussions held as part of the current review, training was identified as a serious gap by participants from each sector of the justice system, by victims, and by representatives from community agencies. Participants invariably commented on the need for ongoing training, both for new staff recruits and as a refresher for veteran members. It was noted that such training would provide an opportunity to deal with concerns as they arise, such as the increase in the practice of dual charging. It was felt that ongoing training would also help to eliminate inconsistencies in practice by ensuring that all justice workers are familiar with the specific policies and procedures that relate to them, and that it would promote an exchange of concerns and discussion of best practices among justice workers and those who work with victims and perpetrators in the community. In this sense it would also foster interagency cooperation.

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[174] *Supra* note 14 at 40.

[175] *Supra* note 14 at 41.

As noted earlier in the section on sentencing, the vast majority of focus group participants expressed grave concern about the need for training for the judiciary.

Representatives of the Police and Public Safety Services Division of the Department of Justice and Police Chiefs noted the substantial cost of training and the fact that the costs of the initial training program had been borne by the Province. They pointed out that since then, the costs of police training were transferred to municipal units under the *Municipal Services Exchange Act* which makes municipal units responsible for policing costs. Municipal units, like the Province, are subject to fiscal restraints and they expect the Province to pay for provincially mandated training.

(i) Initiatives in Other Jurisdictions: The Role of Training

Six Canadian jurisdictions have domestic violence legislation–Saskatchewan (1995), Prince Edward Island (1996), the Yukon Territory (Nov. 1999), Manitoba (September 1999), Alberta (June 1999) and Ontario (passed in December 2000 but not yet proclaimed). The details of this legislation will be discussed later in this report.[176] Most jurisdictions with domestic violence legislation undertook a massive training effort prior to the introduction of their legislation, but were not able to sustain the effort, with the result that the need for more training continues to be an ongoing issue. Most training programs were delivered initially by a team and, like the Nova Scotia model, used a train-the-trainer approach to try to sustain it, to broaden the base of knowledge, and to leave a repository of expertise at the local level. Sessions typically covered family violence dynamics, specific provisions and requirements of the legislation, and the roles of various justice workers and community agencies.

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[176] *Infra* at 139.

Saskatchewan's domestic violence response has undergone two evaluations. Both reports singled out the need for more training. As a result, Saskatchewan has hired an individual with the responsibility of developing and delivering training in family violence and on the domestic violence legislation. Backfilling costs to replace officers who are in training do not seem to be an issue for police and other sectors. Sustainability of training effort is an issue they hope to resolve by using a train-the-trainer approach to create a repository of expertise at the regional level.

In Prince Edward Island, training is ongoing with the support of existing resources such as the Family Violence Coordinator. Backfilling for police while at training is not an issue. However, respondents from Prince Edward Island indicated that it is increasingly difficult to continue the training with existing resources.

Manitoba has recently trained for the implementation of its civil legislation and is now training all Winnipeg police officers. Similarly, Alberta conducted a mass training effort to prepare for its *Protection Against Family Violence Act*, and British Columbia has done training to coincide with its Violence Against Women in Relationships Policy (updated in 2000). The Yukon Territory also undertakes training but the other Territories have not. Sustainability of training is a key issue facing jurisdictions.

In Ontario, new Crowns and those who wish to be designated domestic violence specialists must take a one week summer course on domestic violence. A new Ministry certified the Ontario Provincial Police College domestic violence course for special investigators. New probation staff to be hired as part of the Domestic Violence Justice Strategy will receive special training.

New Brunswick undertook a significant training effort with the introduction of its Women Abuse Protocols in 1991 and has trained some staff sporadically since but has not mounted a significant effort. The Muriel McQueen Centre for Family Violence Research at the University of New Brunswick in Fredericton does offer a certificate program in family violence. Quebec has undertaken training and the implementation of its new sexual assault policy will be accompanied by training.

In the telephone survey carried out in February 2001 to obtain information from other jurisdictions about their policies and programs, respondents saw training as a means not only of imparting information but also of building community capacity and enhancing critical relationships among players. They stressed that training contributes to a common understanding of the problem and of the appropriate means of intervention, as well as to a shared sense of responsibility. Regardless of a jurisdiction's particular approach (domestic violence legislation or not), training was seen as critical to ensuring its effectiveness and the need for ongoing training was recognized. Most jurisdictions favoured components of training that were interdisciplinary in nature. Some noted the usefulness of case studies to "test" the learner's ability to apply the policies and procedures as well as to create a common understanding of "real life situations" and the approach to be used.

(d) Conclusions and Recommendations Regarding Training

The 1999 Evaluation Report identified training as the most important critical success factor in the implementation of the Framework. The need for training for new recruits and providing a refresher and updates to existing staff in all justice sectors was identified by an overwhelming majority of focus group participants during the current review. As well, all other jurisdictions have identified ongoing training as essential to the successful implementation of a pro-charge, pro-arrest, pro-prosecution policy. **It is therefore recommended that Nova Scotia develop and implement ongoing training for all justice sectors, building on the initial success of the train-the-trainer model used following the implementation of the Framework, involving community agencies early on in both the development and delivery.** Ongoing training will help to eliminate inconsistencies in practice, will provide justice workers and community agencies with the opportunity to identify and deal with concerns as they arise, and will help to foster interagency cooperation.

In light of the widespread and serious concerns expressed about the need of the judiciary for training on domestic violence, it is also recommended that the Minister of Justice bring this report to the attention of the Chief Judge of the Provincial Court, the Chief Judge of the Family Court, the Chief Justice of the Supreme Court, and the Chief Justice of the Province, and to the attention of the National Judicial Institute, which provides educational programming for the judiciary across Canada.

7. Accountability

(a) The Framework Requirements for Accountability

The Framework recognized that effective implementation would require significant changes in attitude and practices of justice workers and service providers and that monitoring mechanisms would be necessary to ensure compliance with the policy.[177] The Framework, therefore, required each justice agency to implement a structured audit mechanism to monitor its response to family violence incidents.[178] The Framework demanded that the audit mechanism of each justice agency include mandatory reporting of reasons in cases where charges are not laid or are subsequently withdrawn.[179] The audit process was also to report on victim satisfaction with criminal justice intervention. As well, a tracking system was to be implemented to permit on-going monitoring of cases through the justice system.[180] The Family Violence Prevention Initiative (FVPI) was to serve as the repository for family violence outcome measures generated by all departments.[181] The FVPI was a government-community committee reporting to the Deputy Ministers' Committee on Social Policy, comprised of five deputies representing the Departments of Health, Justice, Community Services, Education and Housing.

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[177] *Supra* note 10 at 7.

[178] *Supra* note 10 at 7.

[179] *Supra* note 10 at 7.

[180] *Supra* note 10 at 7.

[181] *Supra* note 10 at 7.

(b) The 1999 Evaluation Report

A Committee comprised of representatives of the FVPI, the Nova Scotia Advisory Council on the Status of Women, the Transition House Association of Nova Scotia, RCMP and municipal police forces, and Department of Justice was established to develop and oversee the accountability framework for the initiative. As well, in April 1996 a data collection process was implemented to collect information on spousal/partner violence reported to police in the province to track the flow of these cases through the justice system. As noted earlier, police agencies accepted their responsibility by establishing internal audit systems at municipal police departments and local RCMP detachments, while RCMP domestic violence files are also audited centrally by the head office in Halifax, and the Police and Public Safety Services Division of the Department of Justice conducts audits of municipal police agencies. The Victims' Services Division of the Department of Justice also developed a mechanism to monitor its response to victims of intimate partner violence through a file review twice a year. However, the 1999 Review Committee found that no ongoing monitoring process had been fully implemented by the Public Prosecution Service, Courts or Correctional Services.[182] The May to June 1997 consultation sessions had revealed considerable variation across the province with respect to the interpretation and implementation of the Framework policies by justice workers. Recognizing that "[d]eficiencies in the response of any one component of the justice system jeopardizes the effectiveness of the system as a whole," the 1999 Evaluation Report recommended that "the Minister of Justice require each component of the criminal justice system to formally restate their commitment to the Framework for Action Against Family Violence and articulate the means by which they will monitor adherence to the Framework policies."[183]

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[182] *Supra* note 14 at 42.

(c) 2001 Review

Police agencies and Victims' Services continue to take their monitoring responsibilities seriously. Police have found the requirement to state why a charge was not laid to be a helpful accountability mechanism. However, the deficiencies identified in the 1999 Evaluation Report have not been addressed. While recognizing the importance of accountability measures to ensure and to identify necessary changes and improvements, the Public Prosecution Service reports that there has been an audit within the Service of family violence cases, but that "the methodology has been criticized, consultation with Crown Attorneys has not been done, and the process is not complete."[184] Courts and Correctional Services still have not implemented an ongoing monitoring process.

As well, the data collection process undertaken in April 1996 and completed in August 1998 to track the progress of cases through the justice system has not been repeated, and the FVPI, which was to serve as the repository for family violence outcome measures generated by all departments, has been eliminated as a result of the 2000 Provincial budget.

The lack of monitoring and accountability was identified by Crown representatives in the focus groups as an issue in the Public Prosecution Service. Some Crowns felt that the lack of internal audit mechanisms had contributed to uneven application of the policy and reinforced non-compliance.

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[183] *Supra* note 14 at ix.

[184] *Supra* note 72 at 2.

(i) Reports/Evaluations and Monitoring Mechanisms in Other Jurisdictions

Other jurisdictions appear to have limited data collection mechanisms in terms of overall domestic violence case tracking, as significant components are absent from collection. The reader is cautioned, however, that jurisdictional representatives interviewed for this report may not have been fully aware of the data collection, auditing, or accountability mechanisms in place throughout their jurisdiction (as this happens at various levels) and that further investigation is required in order to determine precisely what is available. Auditing, monitoring and accountability mechanisms are important in order to assess effectiveness of strategies and to ensure compliance.

Monitoring mechanisms need further investigation but generally appear inadequate in terms of the ability of jurisdictions to track cases to get an overall picture of the justice system's response from the point of the call to police to sentence completion. Jurisdictions have had to rely on special periodic studies to assess justice system performance and, for the most part only, segments of it. Monitoring is compromised by the absence of integrated justice information systems.

Data is available on certain aspects of domestic violence legislation in the applicable jurisdictions and Saskatchewan, Prince Edward Island, and Alberta have each produced evaluation reports on their legislation. Nova Scotia undertook the most comprehensive tracking study to date and built a prototype information system to collect the data on an ongoing basis which was not implemented due to fiscal restraint. New Brunswick built a system based on aggregate data on family violence cases which continues to be enhanced over time. Manitoba tracked domestic violence cases in three police sites in the early nineties and has produced evaluations of the Winnipeg Family Violence Court and related reports. Saskatchewan is planning to undertake a tracking study of its criminal domestic violence cases. Quebec has annual reports from policing data. RCMP data captures spousal assaults but not the complete range of family violence offences. In addition, the Yukon Territory has produced a report on Spousal Assault and Mandatory Charging.

(d) Conclusions and Recommendations Regarding Accountability

Auditing, monitoring and accountability mechanisms are important in order to assess the effectiveness of the Framework and to ensure compliance. The 1999 Evaluation Report found that while police agencies and the Victims' Services Division of the Department of Justice had accepted their responsibility by establishing internal audit systems, no ongoing monitoring process had been implemented by the Public Prosecution Service, Courts, or Correctional Services. That remains true today. As well, the FVPI, which was to serve as the repository for family violence outcome measures generated by all departments, has been eliminated and the data collection process undertaken in April 1996 and completed in August 1998 to track progress through the justice system has not been repeated. In Nova Scotia and elsewhere, monitoring efforts have been hampered by the absence of integrated justice information systems. **It is recommended that the Minister of Justice require the Public Prosecution Service, Courts and Registries, and Correctional Services to formally restate their commitment to the**

Framework for Action Against Family Violence and require them, within six months of their restatement, to articulate the means by which they will monitor adherence to the Framework. It is also recommended that the unimplemented prototype information system built by the Province to collect data on an ongoing basis to track the progress of the justice system with respect to domestic violence cases be reviewed, and if at all possible, that it be implemented.

8. Interagency Cooperation

(a) The Framework Requirements for Interagency Cooperation

The Framework recognized that domestic violence is a complex societal problem that requires a community-wide response involving not only justice agencies but also the Departments of Health and Community Services, as well as community agencies and services involved in helping and treating victims and perpetrators. The Framework called for improved collaboration and cooperation among all organizations and individuals with a role to play in responding to family violence.[185] It required that justice representatives participate in the development and implementation of protocols in community-based interagency committees throughout the province and that protocols "be clearly articulated and published so that each agency and the public are aware of the role of each of the partners."[186]

Following the adoption of the Framework, Interagency Committees on Family Violence throughout the province provided local interagency coordination, while overall coordination at the provincial policy level, training, public education and interagency support was provided by the FVPI. The Department of Justice Family Violence Committee provided planning and coordination in the justice arena.

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[185] *Supra* note 10 at 8.

[186] *Supra* note 10 at 8.

(b) The 1999 Evaluation Report

The 1999 Evaluation Report indicated that the Department of Justice had made regular status reports to the FVPI Committee regarding the Framework for Action.[187] This had provided an opportunity for other government departments and community representatives to offer input and recommendations. The interagency committees had performed a similar function in all regions of the province.[188] The 1999 Evaluation Report found that the Community organizations throughout the province had given strong support to the Framework and that under the leadership of the FVPI, interagency committees on family violence had participated in the training of criminal justice workers and in managing victim support service projects.[189] However, gaps in service and inadequate coordination of services were identified,[190] and the 1999 Evaluation Report confirmed the need for all participating government departments and community agencies to commit themselves to the mission of the FVPI and to be accountable for the achievement of agency-specific objectives related to the mission of the FVPI.[191] The 1999 Evaluation Report also recognized the important leadership role of government. It recommended that "the Deputies' Committee on Social Policy reconfirm the mandate of the FVPI and establish the necessary accountability framework."[192]

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[187] *Supra* note 14 at 8.

[188] *Supra* note 14 at 8.

[189] *Supra* note 14 at 38.

[190] *Supra* note 14 at 43.

[191] *Supra* note 14 at 43.

(c) 2001 Review

(i) Elimination of the Family Violence Prevention Initiative

Despite the above-noted recommendation of the 1999 Evaluation Report, the FVPI was cut as part of the 2000 budget cuts. Focus group participants from all sectors commented very favourably on the extent to which the Framework had initially served to improve relationships within Communities and communications among agencies, and on the critical leadership role that the FVPI had played in this respect. Many justice and non-justice representatives cited the withdrawal of funding for the FVPI as "sending the wrong message" and as "poor evidence of government commitment to resolve the problem of family violence," noting with irony the amounts of money spent on inquiries and studies of the issue. All participants agreed that the elimination of the FVPI had made interagency cooperation more difficult, and, therefore, less likely to occur.

Participants recognized that interdepartmental collaboration in the justice arena continues through ongoing departmental committees and the establishment of an Interdepartmental Family Violence Committee. However, no mechanism now exists to provide overall coordination of community and Department of Justice activities. Participants recommended that there be a family violence coordinator in every region to oversee and coordinate local activities and services, and that the FVPI be restored, or that, at least, there be a family violence coordinator appointed as a focal point of responsibility in the Department of Justice to oversee ongoing policy development, accountability, training, and other aspects of the Framework. These are ongoing functions that need to be carried out. Concern was expressed that the lack of coordination that has resulted from the elimination of the FVPI undermines the hard work that has taken place, including that undertaken by individuals as part of a personal initiative in the field to improve the effectiveness of the system to date.

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[192] *Supra* note 14 at 43.

(ii) Confidentially of Information as an Obstacle to Cooperation

Apart from the lack of overall leadership and co-ordination resulting from the elimination of the FVPI, focus group participants identified several other obstacles to interagency co-operation. One of the major obstacles identified by police, Victims' Services staff, Community Services representatives, and transition house staff was the perceived confidentiality of information. This is an obstacle, for example, in situations where children are involved and have witnessed acts of domestic violence. Such situations raise concerns for the safety of the victim, for the safety of children, and about the woman's right to autonomy and privacy. Such situations often involve numerous agencies including police, Community Services, Victims' Services, and transition house staff. Confidentiality concerns may likewise inhibit cooperation among police, Corrections staff, and men's treatment services. The different and competing interests and concerns of the agencies involved, the priority attached by each agency to its own role and philosophy, and the caution exercised by each agency against improper disclosure of information within its domain results in the failure to share information. Yet the information is often vital to ensuring a comprehensive, co-ordinated response to very complex and difficult domestic violence cases.

Many participants from justice agencies and community organizations identified the need for protocols and confidentiality agreements among justice agencies, between justice agencies and community organizations and the Department of Community Services. It was noted that the development of such protocols and confidentiality agreements could require the establishment of clear priorities as between the safety of individuals and the right to privacy, for example, and might involve lawyers from Community Services and the Department of Justice to determine where there are genuine legal obstacles to information sharing under the *Freedom of Information and Protection of Privacy Act* or otherwise. Where obstacles do exist, lawyers might develop sound mechanisms for overcoming them. Representatives from the Department of Justice indicated that some interagency protocols were attempted early on after the Framework was adopted, but that those protocols are not solid. Representatives of community agencies emphasized that they must be involved in the development of protocols and that Victims' Services cannot take the place of community organizations in their development.

(iii) The Impact of Funding Cuts on Interagency Cooperation

The extent to which interagency co-operation is working varies around the province. Cape Breton is an area where it appears to have worked very well, according to participants from Cape Breton and from all other areas of the province. In some senses the co-operative environment in Sydney is legendary in other parts of Nova Scotia and is viewed as the model which other areas should strive to emulate. In Cape Breton there was an interagency committee established very early on, whereas in some other areas such as metro Halifax, perhaps due in part to the number of players involved, co-operation was much more difficult and it took much longer to get the interagency committee off the ground, although it does exist now. The Province provided seed money initially to support collaboration among justice agencies and community agencies. In Sydney they co-operated on how they were going to use the money through the Cape Breton Interagency Project. This co-operation was an important means of building trust and sharing information. There was a management board for the interagency project which assisted in the development of confidentiality agreements, information-sharing protocols and quality control mechanisms. Participants from Cape Breton indicated that when the funding for the Cape Breton Interagency Project was cut by the Province, it was a terrible blow. Nevertheless, they are struggling to continue with small grants here and there.

Participants from all parts of the province and from all justice agencies and community organizations felt strongly that the Province should be providing funding to facilitate and support interagency cooperation, and that leadership at the highest levels is vital. A significant number of participants from community organizations indicated that, despite problems early on, inter-agency co-operation among police and community organizations is working and that relationships among most agencies have improved, with the exception of their relationship with the Department of Justice itself, which was at a low point when funding for community projects was cut and which has never recovered since.

(iv) Failure of Framework to Include Community Services

A major gap identified by participants with respect to the interagency co-operation piece of the Framework is the fact that the Department of Community Services is not covered by the Framework. As a consequence, information sharing, case planning and coordination are difficult both at the point of initial involvement of police and with Corrections at the point of decision-making about release. Section 22(2)(i) of the *Children and Family Services Act* states that a child may be in need of protective services where "the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or toward a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence."[193] Protocols specific to the reporting of children exposed to domestic violence exist in Nova Scotia. While Child Protection–Transition House–Men's Intervention protocols exist and all Child Protection agencies are required to have a protocol with police in place in Nova Scotia, participants noted that protocols may not be current, practice is inconsistent, there is evidence of lack of reciprocal reporting between police and Child Protection, training has not been completed on these protocols, and more work needs to be done to ensure a consistent and coordinated response on the part of Child Protection and police.

Concern was expressed by police that when they report to Child Protection that a child has witnessed domestic violence, they receive no information back from Community Services on follow-up to their report. On the other hand, Community Services representatives indicated that the information they receive from police and Victims' Services is minimal, and that they require more detailed information including information on "no-contact" provisions in an undertaking for the release of an accused.

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[193] S.N.S. 1990, c.5.

Further concerns, from a different perspective, were expressed by victims, Victims' Services representatives, and transition house staff who noted that section 22(2)(i) of the *Children and Family Services Act* serves as a disincentive to battered women to seek assistance. Participants explained that victims who seek help expose themselves to charges of failing to protect their children and to the risk of having their children apprehended as children in need of protection. Victims and victims' service agencies stressed the need to find ways to minimize this disincentive and to maximize remedial resources available to both women and children, so as to prevent both women and children from remaining trapped in violent families.

(v) Interagency Cooperation in Other Jurisdictions

Coordination Mechanisms

Most jurisdictions have some variety of local and provincial coordination mechanisms to address family violence through either government interdepartmental committees, local interagency committees, and in fewer instances, case conferencing mechanisms or committees. The effectiveness of these vehicles at any given time depends upon many factors, including the commitment of the individual members and the leadership provided.

Newfoundland and Prince Edward Island have each had a five year strategy on family violence renewed for another five years. Newfoundland has a "Committee of Ministers" that meets three to four times a year and a Provincial Coordinating Committee comprised of six government and six community representatives, as well as six regional committees with government-community partnership in different stages of development. The Newfoundland government has provided funding for each regional committee to hire a coordinator to: (a) improve and coordinate services, communicate policy, address policy and systemic issues; and (b) to carry out public awareness and prevention activities.

Prince Edward Island has a Premier's Action Committee on Family Violence which provides leadership and support at the highest level. The mandate of this Committee has just been extended for another five years. As well, Prince Edward Island has five regional interagency committees, comprised of multiple service providers. These committees coordinate services locally. Outreach workers are employed by interagency committees in three sites and deliver services through transition houses.

Alberta has an Office for the Prevention of Family Violence that provides leadership and a focal point for coordination of family violence activities. Ontario has two inter-ministerial committees at the assistant deputy minister and policy/program levels to coordinate violence against women prevention initiatives led by the Ontario Women's Directorate. As well, there is a joint interministerial committee on domestic violence chaired by Justice Baldwin to implement Ontario's Domestic Violence Justice Strategy. Ontario also has domestic assault review teams which do reviews of probation cases.

Some jurisdictions do not have one central focal point of responsibility for overseeing coordination among government agencies and community organizations, or have weaker links among government departments making coordination difficult. Much of the coordination, public education, policy and protocol development, and training across departments and disciplines, takes place under the leadership of regional interagency committees. Some of these committees, like the ones in Newfoundland, employ staff, either directly or indirectly, to coordinate services, in addition to the service agency representatives who sit on the regional committees.

The telephone consultations with representatives from other provinces revealed that coordination has long been recognized as an essential element in ensuring that the vast array of services are effective in responding to domestic violence. Respondents stressed that coordination needs to happen at all levels in order to be successful and that it takes staff and a commitment of resources to do the work. Respondents also stressed the desirability of providing interagency coordination committees with a mandate to coordinate which is enforceable and supported by real commitment at the top. Coordination is difficult in part because it operates, by definition, across professional disciplines and departmental boundaries, and outside line authority. Typically, the coordination function comes with responsibility that is not accompanied by the authority to effect it. Respondents agreed that accountability mechanisms tend to be weak if not supported by senior management of multiple departments and stakeholders. When coordination works, it is in spite of this and is usually the product of years of partnership and trust-building efforts.

Coordinating Efforts to Combat Domestic Violence with Efforts to Protect Children

Newfoundland, Prince Edward Island, New Brunswick, Ontario, Manitoba, Saskatchewan and Alberta all have statutory provisions similar to section 22(2)(i) of Nova Scotia's *Children and Family Services Act*. Protocols specific to the reporting of children exposed to domestic violence exist in Prince Edward Island, Ontario, Manitoba, and Alberta. Respondents in other jurisdictions recognize that battered women are deterred from coming forward and seeking assistance when they realize that seeking protection from their abusive partner increases the risk that their children may be taken away. Scholars who have written on the subject of domestic violence have pointed out that in many cases, the victim stays with an abusive partner not because she does not care for the child, but rather because she believes that staying is the best way to provide them with continued financial support, shelter, and education.[194] As well, statistical analyses indicate that the point of separation is often the point at which the risk of death or serious physical injury is the greatest.[195] Victims themselves report that threats of harm escalate when the batterer suspects the victim may be considering leaving.

Of course, not all battered women are completely innocent victims and domestic violence workers must be aware of the need to protect children, but so must child protection workers be aware of the dynamics of domestic violence. Some jurisdictions have succeeded in bringing domestic violence workers and child protection workers together to develop strategies to assist women to protect their children. In some jurisdictions such as parts of Massachusetts and Oregon, specialists in both fields have come together to exchange information, to provide cross-training, and to develop protocols for case handling and service provision.[196] In Maine, in-house domestic violence experts are placed at each child protective service office, to provide ongoing training and consultation.[197] In Massachusetts and Oregon, child protection workers provide some services to the non-violent parent and domestic violence workers provide some services for abused children through their programs.[198] In Massachusetts, in the two area offices that piloted Domestic Violence teams comprised of a domestic violence worker and a child protection worker, there appears to have been a reduction of out-of-home placements for abused children whose mothers were also abused.[199] These types of programs may provide a means of protecting and supporting both women and children and of minimizing the disincentive that section 22(2)(i) of the *Children and Family Services Act* creates for women in need of assistance. It is worthy of note that in Ontario, there are protocols in place for cooperation between Children's Aid Societies and violence against women workers and that there is joint training as well.

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[194] *Supra* note 24 at 35.

[195] See M. R. Mahoney, "Legal Images of Battered Women: Redefining the Issue of Separation" (1991) 90 Mich. L. Rev. 1, 65-71. See also J. Zorza, "Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women" (1995) 29 Fam. L. Q. 273, 274.

[196] See L.Y. Aron & K. K. Olson, "Efforts by Child Welfare Agencies to Address Domestic Violence: The Experience of Five Communities" (1997) 33 Urban Institute at 52-61, 79-80, cited in Epstein, *supra* note 24 at 37, n.181.

(d) Conclusions and Recommendations Regarding Interagency Co-operation

The 1999 Evaluation Report recognized that government had an important leadership role to play and recommended that the Deputies' Committee on Social Policy reconfirm the mandate of the Family Violence Prevention Initiative and establish the necessary accountability framework. Virtually all focus group participants in the current review acknowledged the very valuable role the FVPI had played in facilitating and supporting interagency cooperation and expressed serious concern about the elimination of it in the 2000 Provincial budget.

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[197] K. Concannon, "'Other Maine:' The Way Life Shouldn't Be" *Bangor Daily News* (23 October 1997), cited in Epstein, *supra* note 24 at 37, n.181.

[198] Aron & Olson, *supra* note 196.

[199] Aron & Olson, *supra* note 196 at 67-68.

Other Canadian jurisdictions have recognized that coordination must take place at all levels to be effective and that it takes staff and a commitment of resources to do the work, as well as leadership and support at the highest level. **It is recommended that the Province support and strengthen, with senior level commitment, the coordination of family violence activities, within and external to the Department of Justice, involving both government and community stakeholders.** This initiative should build on the partnerships created by the Family Violence Prevention Initiative and the commitment of the Interagency Committees on Family Violence around the Province, as well as the efforts of those involved in the initial implementation and training under the Framework.

Confidentiality concerns, cultural differences, and the resulting refusal to share vital information pose significant obstacles to ensuring a comprehensive, co-ordinated response to complex and difficult cases involving various justice sectors, community agencies, and the Department of Community Services. **It is therefore recommended that existing interagency protocols among police, child welfare, transition houses, Corrections and men's treatment programs be reviewed and that, where required, new interagency protocols be developed and confidentiality agreements concluded to facilitate the sharing of information necessary to protect and support victims and their children.** Priority should be given to reviewing, revising and reinforcing protocols in place between child protection and police to improve information sharing, case planning and coordination.

Focus group participants and respondents from other jurisdictions stressed that battered women are deterred from coming forward and seeking assistance when they realize that s. 22(2)(i) of the *Children and Family Services Act*, or its equivalent in other jurisdictions, and protocols specific to the reporting of children who witness domestic violence, expose them to the risk of having their children taken away. It is important to find ways to minimize this disincentive and to maximize remedial resources available to both women and children, so as to prevent them from remaining trapped in violent families. **It is therefore recommended that, as in Ontario and in several jurisdictions in the United States, specialists in child protection and in domestic violence be brought together to exchange information, to provide cross-training, and to develop protocols for case handling and service provision.**

9. Gaps in the 1995 Framework for Action Against Family Violence

(a) Programs for Children Exposed to Family Violence

Research shows that children who grow up in violent homes are often just as harmed by witnessing abuse as are children who are directly abused, and that children who witness violence demonstrate the same emotional and behavioural difficulties as those who are abused. The 1993 VAWS done by Statistics Canada showed that approximately 29% of Canadian women who had ever been married or lived with a man in a common-law relationship had been assaulted by a marital partner.[200] About 39% of women in violent marriages reported that their children witnessed violence against them.[201] Furthermore, the 1993 VAWS indicated that witnessing violence in the home can establish a pattern of aggressive behaviour which perpetuates the cycle of abuse. The Survey revealed that boys who have witnessed their fathers abusing their mothers were three times more likely to become abusive, and that girls who have witnessed their fathers' abuse of their mothers were twice as likely to become abused in their own intimate relationships.[202]

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[200] *Statistics Canada*, *supra* note 1.

[201] *Statistics Canada*, *supra* note 1.

Statistics Canada's third annual report, "Family Violence in Canada: A Statistical Profile 2000" indicated that in the 5 year period between 1994 and 1999, "[a]pproximately half a million children...heard or witnessed a parent being assaulted."[203] In the United States, scholar Deborah Epstein speaks of

> the harm inflicted on children through adult battering relationships. This battering starts early: national surveys report that seventeen percent of obstetrics patients are battered. Pregnant victims have an inflated risk of miscarriage and are four times more likely to deliver low birthweight babies. The damage continues after birth. Nearly half of all homeless women and children have been forced to flee violence in their homes. And children who witness violence between adults are at risk of physical harm when they are caught in the crossfire, either accidentally or (particularly with adolescent boys) while trying to intervene to protect their mothers. Approximately sixty-three percent of young men between the ages of eleven and twenty who are imprisoned for homicide have killed their mothers' batterers. These boys also have higher rates of suicide, violent assault, sexual assault, and alcohol and drug use.[204]

Given the well-documented intergenerational cycle of violence, it is clear that the consequences of domestic violence extend far beyond the abuser and the victim, and that eradicating domestic violence requires that steps be taken to assist children exposed to violence in order to stop the intergenerational cycle. In the focus groups conducted as part of the current review, victims of domestic violence expressed concern about their children and the impact the abuse had had and continued to have on them after separation. They identified the need for programs for their children to help them overcome the fear and trauma of witnessing violence.

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[202] K. Rodgers, "The Generational Cycle of Violence," ("Violence in the Family," Amsterdam, 13-15 October 1994).

[203] *Statistics Canada, supra* note 1 at 5.

[204] *Supra* note 24 at 8.

The whole area of programs for children exposed to family violence is extremely under-funded. Yet there is increasing recognition that such programs are a key to preventing and reducing domestic violence. Some jurisdictions have begun to invest heavily in this area, providing counselling, either individually or in a group format or both. Complementary support programs are also provided for mothers who have been abused to learn parenting skills and techniques for coping with their children's behaviour, and to assist them in understanding and meeting their own and their children's needs.

In Nova Scotia there are no formal programs except as provided by transition houses on a limited basis. Programs are also very limited in Newfoundland, New Brunswick, Quebec, Prince Edward Island, the Northwest Territories and Nunuvat. Saskatchewan offers four programs for mothers and children exposed to family violence. Manitoba offers short- and long-term counselling for children who witness violence at home. Calgary has a number of services for children and youth who have either been exposed to domestic violence or who are exhibiting aggressive behaviours at home or school themselves. These community-based services are available to families using the services of the Domestic Violence Court. Ontario has 61 early intervention programs for children aged 4-16 who have been exposed to family violence, based on a psycho-educational model and has separate groups for mothers to assist with parenting issues. British Columbia also offers individual and group counselling for children exposed to violence in the home.

(b) Conclusions and Recommendations Regarding Children's Programs

The whole area of programs for children exposed to family violence is extremely underfunded. In Nova Scotia there are no formal programs. Yet there is increasing recognition that such programs are a key to preventing and reducing domestic violence. Some jurisdictions such as Ontario and British Columbia have begun to invest heavily in this area. **It is recommended that Nova Scotia invest in the development of programs for children exposed to family violence, involving both groups and individual counselling for children and youth to address recovering from trauma and learning new, non-violent conflict resolution skills, as well as to address the needs of those exhibiting aggressive behaviour themselves at home or in school.** These programs should be accompanied by a complementary program for mothers/non-violent parents to learn about the impact of the violence on their children, coping methods, and parenting skills which support what the children are learning, along with safety planning. These programs are perhaps our most promising chance to reduce family violence by preventing the intergenerational cycle of violent behaviour.

(c) Men's Intervention/Treatment Programs

As noted under the section on sentencing, the most common disposition in domestic violence cases in Nova Scotia is probation, and the use of conditions for referral to spousal abuse treatment programs has increased significantly since the implementation of the Framework.[205] Yet focus group participants underlined the fact that resources for men's intervention and treatment programs in Nova Scotia are inadequate. Probation Services has cut funding for treatment for abusive men and many men cannot afford to pay the cost themselves.

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[205] See *supra* at 81.

(i) Men's Intervention Programs in Other Jurisdictions

All Canadian jurisdictions except the Northwest Territories and Nunuvat have men's intervention or assaultive partners programs and those jurisdictions with a renewed justice strategy are investing heavily in these programmes as a measure to stop the violence from recurring. Key elements of such programs include group counsellling, sometimes supplemented with individual counselling; a complementary counselling program for, or frequent contact with, partners of those charged or convicted of a domestic violence related offence; and a specialized curriculum designed to treat domestic violence. In the Northwest Territories and Nunavut, there is an attempt to meet treatment needs on an individual basis within correctional institutions. In jurisdictions with treatment programs, some programs are corrections-based, while others fall within the purview of either Departments of Health cr Community Services. In general, however, programs are not sufficient to meet needs and lengthy waiting lists are common.

Alberta has a proposal for a Treatment Framework which will see an expansion and funding based on compliance with standards. Ontario is expanding the number of programs as part of its Domestic Violence Justice Strategy and specialized court approach. Indeed, men's treatment programs are an integral element in the Ontario model. Programs exist in approximately one-third of the court jurisdictions in Ontario now and, once the justice strategy is complete, all 59 areas will have programs. Offenders pay a portion of the cost to promote accountability and responsibility but this is done on an "ability to pay" basis. Prior to implementing this approach, Ontario reviewed the experience of other jurisdictions with these programs and their success rates. The effectiveness of the domestic violence partner abuse programs in Ontario is currently under evaluation.

The results of studies concerning the effectiveness of treatment are controversial due to a number of variables, including sample size, different modalities of treatment, the presence or absence of criminal sanctions, and whether treatment is undertaken voluntarily or pursuant to court order, to mention a few. However, there is substantial empirical evidence to suggest that treatment does reduce recidivism. In Canada, Dutton, a Vancouver psychologist, conducted a study in 1986 which found that men in a male batterers program in British Columbia had a 4% recidivism rate after 2.5 years compared to a 40% rate for men who did not participate in the programs.[206] In Ontario, evaluations of 18 male batterer programs showed, at a three month follow-up, decreases in verbal, emotional, and physical abuse as well as a decrease in medical attention sought and injuries sustained by the victim. Eighty percent of victims reported feeling safer while their partner was in treatment, whereas this figure rose to 86% of victims feeling safer three months later.[207] In Calgary, a study of a two-phase male group treatment program, consisting of 12 weekly sessions followed by 21 monthly sessions, found that no physical violence was used by 85% of the clients after two years.[208]

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[206] D.G. Dutton, "The Outcome of Court-Mandated Treatment for Wife Assault: a Quasi-experimental Evaluation" (1986) 1 Violence and Victims 163-175.

[207] ABT Associates, 1990, cited in *Domestic Violence Justice Strategy - Partner Assault (PAR) Programs: an Overview* (July, 2000).

[208] Brown and Chatto, 1992, cited in *Domestic Violence Justice Strategy - Partner Assault (PAR) Programs: an Overview* (July, 2000).

In the United States, an evaluation of the Duluth, Minnesota Domestic Abuse Intervention Project found that, even with a broad measure of recidivism (convictions for domestic assault, protection orders, and police contact for suspicion of domestic assault), 60% of the clients did not repeat the violence after 5 years. An evaluation of a treatment program comparing reports of psychological and physical recidivism by both batterer and partner immediately post-treatment, at 6 months, and 2 years, found decreased levels of violence were maintained at the 2 year mark.[209] As well, in 1998 the National Institute of Justice reported that the majority of evaluations, which have been considered methodogically sound, have found statistically significant reductions in recidivism among men participating in batterer intervention.

Given the prevailing data on success rates of treatment, it would appear that referral to spousal abuse treatment programs is an appropriate condition of probation, at least where the offender has not already completed such a program. The 1999 Evaluation Report noted that access to programs was inconsistent, that 12 month waiting lists were not uncommon and that no provincial programs standards had been met.[210] At the time there were six treatment programs funded by the Department of Community Services and other unfunded programs offering various levels of service. The 1999 Evaluation Report recommended that a Committee of representatives from the Departments of Health, Community Services, and Justice review service issues and funding models, and develop and implement a service delivery model to improve access to approved programs. This recommendation was subsequently referred to Community Services.

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[209] Petriek, Gildersleeve-High, McAllistren and Subotnik (1994), cited in *Domestic Violence Justice Strategy - Partner Assault (PAR) Programs: an Overview* (July, 2000).

[210] *Supra* note 14 at 39.

At present there are groups being operated by Community Corrections in Truro and Dartmouth. It appears that the inadequacy of treatment services in Nova Scotia may be undermining the effectiveness of the Framework. Yet money spent on treatment programs may be money saved in other contexts, from the costs of medical treatment for victims and counselling of battered women and their children to courts costs, and the many other social costs that flow from the intergenerational cycle of abuse.

(d) Conclusions and Recommendations Regarding Men's Programs

The most common disposition in domestic violence cases in Nova Scotia is probation and the use of conditions for referral to spousal abuse treatment programs has increased significantly since the implementation of the Framework. There is substantial empirical evidence to suggest that treatment does reduce recidivism. Those Canadian jurisdictions with a renewed justice strategy are investing heavily in these programs. However, focus group participants emphasized that resources for men's intervention and treatment programs in Nova Scotia are inadequate. **It is therefore recommended that Nova Scotia invest in the expansion of programs for assaultive partners to provide intervention/treatment based on a set of common standards as a measure to prevent the violence from recurring.**

(e) Outreach Services for those living in Aboriginal Communities and for Visible Minority Women

The 1999 Evaluation Report noted that concerns had been expressed by justice workers regarding the reluctance of Aboriginal victims to become involved in the justice system.[211] The 1999 Evaluation Report recommended that the Province enhance outreach services to those living in Aboriginal communities and to visible minorities to support victims and to increase reporting of spousal/partner violence. Again during the current review, focus group participants noted that women in Aboriginal communities and visible minority victims are less inclined to call police, "because of the history of disrespect of police in dealing with people from these communities." As a result, Aboriginal women and women from visible minorities are looking for alternative means to deal with these problems.

In the United States studies show that an alarmingly high proportion of African American men are involved with the justice system. In some states, the rate is as high as 50%.[212] Victims whose batterers are African American may be reluctant to add to this statistic,[213] especially if they regard the justice system as oppressive or racist.[214]

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[211] *Supra* note 14 at 36.

[212] A report entitled "Young Blacks Entangled in the Legal System" puts the Washington, D.C. rate at 50% of men age 18 - 3: *The Washington Post* (26 August 1997) B1, cited in L. Bennett, L. Goodman & M.A. Dutton, "Systemic Obstacles to The Criminal Prosecution of a Battering Partner: A Victim Perspective" (1999) 14:7 Journal of Interpersonal Violence 6, online: Proquest <http://proquest.umi.com/> (date accessed: 14 February 2001). Page references are to the electronic version.

[213] B. Richie, "Battered Black Women: A Challenge for the Black Community" (1985) 16:2 Black Scholar 40-44, cited in Bennett, Goodman & Dutton, *ibid.* at 6.

[214] J. Meier, "Domestic Violence, Character and Social Change in the Welfare Reform Debate," cited in Bennett, Goodman & Dutton, *ibid.* at 6; see also K. Crenshaw, "Mapping the Margins:

Following the 1999 review, the need for enhanced outreach services to women in Aboriginal communities and to visible minorities was referred to a Tripartite Committee (consisting of representatives of the Mi'kmaq people and representatives from the federal and provincial Departments of Justice) and to a Black Task Force for a province-wide perspective. As well, consultations were conducted with the Aboriginal community to improve accessibility to Victims' Services. However, it is unclear what progress was made as a result of these referrals and consultations.

(f) Conclusions and Recommendations Regarding Aboriginal and Visible Minority Victims

The reluctance of victims living in Aboriginal communities and from visible minorities to report spousal or partner violence was noted in the 1999 Evaluation Report and again by focus group participants during the current review. It is important for justice workers to be aware of this reluctance and of the reasons for it. **It is therefore recommended that this issue be addressed in the training program developed for justice workers.** As well, the concerns of victims of perpetrators from Aboriginal communities and racial minorities, that reporting their batterers to police is a breach of loyalty to the community and will contribute to racial/cultural stereotyping, may be alleviated by increased reliance on evidence other than victim testimony.[215] **It is recommended that this be done wherever possible. As well, insofar as evidence suggests that advocacy services can assist victims in finding the strength to escape domestic violence on their own and can help to amplify their voices to enable prosecution policies to**

Intersectional, Identity, Politics and Violence Against Women of Color" (1991) 43 Stan. L. Rev. 1241 at 1257.

[215] *Supra* note 24 at 18.

be applied in a way that meets the needs of particular victims,[216] it is recommended that Nova Scotia invest in expansion of support services for abused women, including advocacy services to provide outreach and support for women from Aboriginal communities and visible minorities.

10. Public Education

(a) Discussion

Time and again focus group participants spoke of the need for increased public education on intimate partner violence. While the Framework for Action focuses on the response of the justice system once such violence has occurred, many focus group participants emphasized the need for prevention. It was felt that one step toward prevention would be a substantial, ongoing public education initiative, to send the message that violence within intimate relationships will not be tolerated. The analogy frequently used here was that of changed public perceptions of driving while under the influence of alcohol. While "drunk driving" has not been eliminated, its social acceptability (and presumably, therefore, the incidence of it) has been reduced significantly through a combination of public education and stiffer penalties for those who are convicted of driving offences involving alcohol.

Taken together, focus group comments suggested that a comprehensive public education program should be multi-faceted both in terms of the groups targeted, and the methods of delivering such information. Children who had witnessed one parent abusing the other need to be taught that non-violent relationships are possible.[217] Victims and potential victims were seen to be in need of information which would allow them to identify abusive behaviours, including emotional and psychological abuse which could well be forerunners of physical violence. One victim stated that, looking back, she can see that the ill-treatment started early in her relationship, but at the time she was not able to identify her partner's treatment of her abusive; nor did she realize that it was likely to escalate into physical harm. Public education could also inform victims and their families of services available to them. Perpetrators and potential perpetrators need to know that any physical violence, if reported, will be dealt with seriously by the justice system, and need to learn the difference between intimidation and abuse on the one hand and ordinary persuasion on the other. One focus group participant spoke of reading her teenage son a list of coercive behaviours from a publication on intimate partner violence. His response was that these were just "normal" ways of getting what you wanted in a relationship.

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[216] *Supra* note 24 at 19-20.

Public education materials and multi-media campaigns are undertaken by other jurisdictions to varying degrees. For example, British Columbia has a provincial "Violence Prevention Pipeline" on its web site and Alberta has sponsored a Family Violence Prevention Month for 14 years. Other jurisdictions also observe a Family Violence Prevention Month (often in November or February). Web sites, poster campaigns, and the like are also used in public education efforts. In New Brunswick, public education on intimate partner violence has been undertaken by a Provincial Caring Partnerships initiative sponsored by the Muriel McQueen Fergusson Foundation. The federal government, through its National Clearinghouse on Family Violence, Alberta's Office for the Prevention of Family Violence, and Nova Scotia's former

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[217] *Supra* at 127.

Family Violence Prevention Initiative are the only governments to have maintained a resource centre/lending library and publications arm.

A number of Canadian jurisdictions have also incorporated information regarding intimate partner violence into school curricula. The focus of school-based initiatives is on teaching the elements of healthy relationships and the ability to distinguish between acceptable and unacceptable behaviour to both adolescent boys and girls as they begin to date.

Certainly some public education on intimate partner violence has already been undertaken in Nova Scotia. The introduction of the Framework for Action sent a message not only to those who work within the justice system, but more generally:

> There is no doubt that there has been an increased awareness of family violence as a crime and a serious social problem. The publicity surrounding the implementation of the Framework for Action and the ongoing efforts of the FVPI ha[ve] served to heighten public awareness. It is likely that this has been a factor in influencing family members or support persons of victims to encourage them to report incidents of family violence to the police.[218]

Furthermore, Nova Scotia's annual Family Violence Prevention Week campaign is highly regarded as a national model. A range of publications and other educational items have been produced in conjunction with the campaign. As noted above, Nova Scotia's former Family Violence Prevention Initiative produced materials on intimate partner violence, and maintained a resource and lending library. The Nova Scotia Advisory Council on the Status of Women has also assisted in public education: the Council maintains a 1-800 line where the public can request general information, and its resource centre produced a publication called "Making Changes." Approximately 24,000 copies of this have been distributed, and it has been posted on the Council's website. Their website also provides a statistical fact sheet on intimate partner violence. Finally, information on healthy relationships is part of the curriculum in at least some junior high schools in Nova Scotia.

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[218] *Supra* note 14 at vii.

(b) Conclusions and Recommendations Regarding Public Education

Given that the ultimate goals of any policy on intimate partner violence must encompass not only efforts to provide an effective justice response, but also efforts to prevent such violence in the first place, public education must be seen as an important component of the province's policy. **It is therefore recommended that Nova Scotia maintain and expand its initiatives in public education.** Such initiatives should assist in identifying behaviours that are abusive, providing information on services available to victims and their families, and increasing public understanding of the fact that intimate partner violence will not be tolerated. Components of the public education message would need to be tailored, both in terms of the specific content and the medium used to convey it, in order to reach various groups within society, including those already in, or at risk of entering, abusive relationships.

11. Civil Remedies

(a) Concern Expressed in Focus Groups

Since the Framework for Action Against Family Violence requires police to arrest and charge accused batterers where there are reasonable and probable grounds for doing so, and the Framework policy requires the inclusion of a no-contact provision in an undertaking for the interim release of an accused, one might have expected that a woman and her children would remain in their home when the alleged batterer is removed. However, the reality is that in the confusion and upset that surround a violent incident, the woman (in fear for her safety and for the safety of her children) often seeks refuge in a transition house. Charges are laid, but the accused is released. Even with the no-contact provision, the perception of victims is that they are not safe and that she and her children become "prisoners," while "he's free." Thus, we heard from victims and victim service agencies in the community that "Nova Scotia needs to move ahead with ensuring that perpetrators are removed from the family's dwelling, allowing the family to remain and not the opposite, as it exists now."

Victims who pursue criminal prosecution are often in need of civil family law remedies as well. If the victim is married to the abuser, she may want to file for divorce. Whether she is married or not, if they have children together she needs a determination of custody, child support, and sometimes protection for her children from the perpetrator's abuse. However, the fragmented nature of our traditional court system presents overwhelming obstacles for battered women seeking justice, and delays in Family Court processes often aggravate the economic pressure on the victim to resume habitation with the perpetrator.

(b) Why Nova Scotia Opted for the Framework

In some jurisdictions these concerns are addressed in part through provincial domestic violence legislation which provides civil remedies to supplement the provisions of the *Criminal Code*. At the time the Framework was adopted in Nova Scotia, Saskatchewan had already introduced civil legislation. Under this legislation,[219] emergency intervention orders became available 24 hours a day from a number of specially recruited and trained Justices of the Peace.

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[219] *Infra* note 224.

These orders contain provisions granting exclusive occupation of the home to the victim, restraining abusers from communicating or contacting victims/family members, and authorizing police to supervise in removal of personal belongings. Although the term of the order is not stipulated in the Act, in practice it is 30-120 days, depending on how long it takes to access services and community resources (taking into account delays in accessing lawyers or Legal Aid). In urban areas, 30 days is usually sufficient.

A longer term Victim's Assistance Order is also available to provide additional remedies such as compensation for losses (employment, medical or dental expenses), temporary possession of assets such as the car, and other remedies. Warrants of entry were also thought necessary to enable police to enter the premises of someone suspected to be experiencing domestic violence but unable to act on their own, as in some cases of elder abuse or persons with disabilities. It is noteworthy that Saskatchewan, in selecting their Justices of the Peace, chose individuals knowledgeable about the dynamics of domestic violence and representative of various geographic, cultural, and linguistic backgrounds, believing it to be easier to train new Justices of the Peace in legal matters than in family violence issues.

When Saskatchewan's legislation was first introduced, there was some concern that it would be ruled unconstitutional on the grounds that it constituted an *ultra vires* attempt by the Province to legislate in criminal matters, an area reserved for the federal government. Other concerns related to whether this legislation would be used as a substitute for criminal charges, although it was introduced to complement the *Criminal Code*. Concerns were also expressed about the timing of the legislation and whether it was needed at all. Critics pointed out that most of the remedies were already available under existing legislation, such as the *Criminal Code* which provided, for example, judicial interim release conditions, peace bonds, probation conditions, and release conditions for inmates. Many felt the problem was more one of lack of enforcement than absence of legislation.

In Nova Scotia, domestic violence legislation was drafted[220] but, during the consultations that preceded the adoption of the Framework, most stakeholders believed that a better plan of action was to emphasize enforcement and rigorous prosecution of existing *Criminal Code* provisions. There was also fear that the timing of the introduction of such legislation would undermine a strong criminal approach,[221] so the Nova Scotia Framework for Action was introduced.

(c) 2001 Review

When the Framework was reviewed by the Department of Justice Monitoring Committee in 1999, the Committee recommended that

> the Department of Justice coordinate a focused consultation with key community and justice system stakeholders to review the experience of provincial jurisdictions which have enacted provincial/family violence legislation and to determine, in light of the results obtained from the Framework for Action, whether the adoption of such legislation would benefit victims of spousal/partner violence and their children.[222]

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[220] Draft legislation was prepared by Brian Norton, Senior Solicitor, Department of Justice.

[221] For more detailed discussion of these concerns see C. Marshall, "The Response of the Criminal Code Justice System to Family Violence in Nova Scotia," *supra* note 11 and "From Rhetoric to Reality," the report of the Nova Scotia Law Reform Commission, *supra* note 12.

[222] *Supra* note 14 at 45.

In the jurisdictional comparison and literature review done as part of this review, we looked at the legislation that exists in six Canadian jurisdictions and at reviews done of this legislation, and we questioned stakeholders in those provinces about their views on the value of the legislation.[223] Evaluations and discussions with other jurisdictions demonstrate that victims appreciate the immediacy of protection and the practical remedies of exclusive occupation of the home and temporary care and custody of the children. Five years after the adoption of the Framework, it may be time to reconsider the decision not to enact civil domestic violence legislation and to look more seriously at the additional range of remedies provided under the legislation in other provinces.

(i) Overview of Domestic Violence Legislation in Canadian Provinces

Six jurisdictions have now passed domestic violence legislation: Saskatchewan (1995), Prince Edward Island (1996), Yukon Territory (November 1999), Manitoba (September 1999), Alberta (June 1999), and Ontario (passed in December 2000 but not yet proclaimed).[224]

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[223] For detailed descriptions of the provisions of the legislation in Saskatchewan, Prince Edward Island, the Yukon Territory, Manitoba, Alberta, and Ontario see Appendix F which also contains comments received from stakeholders in these jurisdictions working with the legislation and highlights of jurisdictional reviews. See also Canada, Minister of Justice, *Review of Provincial and Territorial Domestic Violence Legislation and Implementation Strategies* by T. Roberts (Ottawa: Research and Statistics Division, Department of Justice, 2001). See also R. McKendrick, Saskatchewan Department of Justice, "Civil Legislation to Combat Domestic Violence in Canada: Options for Victims" (Montreal, Quebec, 6-11 August 2000), presented to the Tenth International Conference on Victimology. This paper also discusses, in more detail, the training provided prior to the introduction of the various pieces of civil legislation.

[224] *Victims of Domestic Violence Act*, S.S. 1994, c.V-6.02 (proclaimed February 1995); *Victims of Family Violence Act*, S.P.E.I. 1996, c.V-3.2; *Family Violence Prevention Act*, S.Y. 1997, *Protection Against Family Violence Act*, S.A. 1999, c.P-19.2; *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, S.M. 1998, c.D93; *Domestic Violence Protection Act*, S.O. 2000, c.33.

(ii) Scope and Definitions

Most acts apply to cohabitants, "family members" or individuals who are living together in a family, spousal, or intimate relationship and to persons who are parents of children, regardless of their marital status or whether they have lived together. Prince Edward Island and Alberta define the spousal relationship as heterosexual only. Alberta adds a clause clarifying that parents are not limited from using force by way of correction toward a child in their care, providing the force does not exceed what is reasonable in the circumstances. Manitoba's legislation applies not only to victims of domestic violence but to all persons subjected to stalking, regardless of the nature of the relationship between the victim and the stalker. While Ontario's Act also makes specific references to behaviours typically involved in stalking, its application is only to those occurring within a defined domestic context.

Domestic violence is usually defined as including physical abuse, threats, and damage to property (typically worded as an act or threatened act causing bodily harm—or injury—or damage to property), forcible confinement, or sexual abuse. The Yukon Territory Act adds "depriving a person of food, clothing, medical attention, shelter, transportation or other necessaries of life" and both Prince Edward Island and Manitoba include emotional or psychological abuse. The reader is encouraged to consult the specific pieces of legislation for a precise wording; this description is intended to provide the reader with a general sense only. See also Appendix F for a more detailed overview of the provisions of the legislation in each province.

(iii) Basic Features/Key Provisions

The legislation has similar key provisions but with some differences.[225] Each enables the granting of two different types of orders—a short-term Emergency Intervention or Protection Order and a longer-term Victim Assistance Order, sometimes called a Protection or Prevention Order. In Saskatchewan, the Yukon Territory, and Alberta, a Warrant of Entry provision is also available.

The short-term orders are available 24 hours a day, either by telephone from police at the scene of an abuse incident or by an appearance before a specially-designated Justice of the Peace trained in family violence issues. Most require the emergency orders to be confirmed within a specific period of usually 3-7 days by a Superior Court within the jurisdiction, except Manitoba, where a reverse onus is placed on the respondent to contest it within 20 days of service of the order. Ontario has a provision enabling either party to request a variance or termination within 30 days but still requires judicial review. In practical terms, the Manitoba reverse onus provision has the effect of significantly reducing the workload on the court. As well, evaluations in other jurisdictions suggest that emergency orders are rarely challenged by the respondent, and are most often confirmed by the court upon review.

Some statutes, such as Saskatchewan's and Manitoba's, do not stipulate the length of time an emergency protection order can remain in effect, although in practice it is usually between 30 and 120 days. Others like Prince Edward Island's and Alberta's stipulate a 90 day time limit on emergency protection orders. All of the statutes have remedies similar to the following:

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[225] For more detailed descriptions, see the articles cited *supra* note 223.

- grant exclusive occupation of home to victim;
- remove respondent from home;
- no contact/communication order;
- an order that the respondent cannot attend at a specific place;
- accompaniment by a police officer to remove personal belongings; and
- any other provisions necessary for the protection of the victim (e.g. such as removal of firearms, leaving the car with the victim).

Some legislation goes on to enumerate "other provisions" more specifically such as:

- order respondent not to take, sell, or damage property;
- order respondent to stop any further violent acts;
- grant possession of certain personal property (such as a motor vehicle, medical or credit cards, house keys);
- grant the victim temporary care and custody of the children;
- prohibit the publication of the victim's name and address;
- seizure of weapons and documents authorizing ownership, possession, or control of a weapon;
- restraining from conduct that is threatening, annoying, or harassing to the applicant; and
- restraining from following applicant from place to place, or being within a specific distance.

The offence and penalty sections differ in that some Acts include penalties within their own legislation and others use section 127 of the *Criminal Code* to govern breaches of orders made under their domestic violence legislation. Prevailing wisdom within other jurisdictions suggests that the *Criminal Code* remedy is more effective, is treated more seriously, and garners more serious sentences/consequences. In addition, police are more familiar with the use of the *Criminal Code*.

(iv) Utilization Rates

Emergency orders are being used but the longer-term orders are not, largely due to the fact that the process requires legal representation which, in all jurisdictions except Alberta, is not free and Legal Aid resources are insufficient. Warrant of entry provisions are hardly ever used.

With respect to short-term emergency orders, Manitoba appears to have among the highest utilization rates. Manitoba, in its first year, has seen about 1100 orders issued compared to 400 per year in neighbouring Saskatchewan, which has had legislation for six years. However, when compared to the number of domestic incidents to which police are called, this seems low. The number of emergency orders issued on average per year for each jurisdiction are: Manitoba (1100), Saskatchewan (400), Alberta (122), Prince Edward Island (50), Yukon Territory (30). This is not to diminish the value of these orders for the victims.

Jurisdictional studies suggest that utilization rates are related to a number of factors including, but not limited to, the following[226]

- the philosophy and interpretation attached to the legislation by the various participants (that is, whether it should be used in conjunction with or instead of criminal charges, the definition of what constitutes an "emergency," and the conditions under which it is appropriate to use the legislation); and the degree to which this understanding is shared among players involved in providing services to victims;
- whether or not training has been provided, to whom, and the quality and content covered; and

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[226] *Infra* notes 228, 229 and B. Bradford, *Final Report: Victims of Family Violence Act Monitoring* (Charlottetown, Prince Edward Island: 1998).

- the degree of awareness among the public and victims about family violence and the remedies available under civil legislation.

The factors affecting usage rates require more study to ensure that the legislation is effective in reaching its intended audience. There may be victims who could potentially benefit from this legislation but, for whatever reasons, are not able to avail themselves of its provisions.

While utilization rates differ among jurisdictions with legislation in effect, all, with the exception off the Yukon Territory, have used it frequently and found it to be beneficial. Jurisdictional reviews, as well as stakeholders, report that the legislation is easy to use and is meeting its objectives. The Yukon Territory attributes its low utilization rate to factors such as poor police support, as not enough officers have taken training on the Act; insufficient public awareness about remedies available under the Act; and to the poor socio-economic conditions, substance abuse, cultural divisions, and lack of alternatives in the north. It is believed that women in the north have to leave their community to be safe.

(v) Perceived Benefits

Jurisdictional reviews and the telephone interviews conducted during the current review revealed that the key benefits of the legislation are that:

- it allows victims and their children to remain in their home, to attend work, and to go to school in their home communities, causing much less disruption to the family, and more appropriately places the burden on the perpetrator to find alternate accommodation;
- it includes practical provisions that benefit the victim and children and a broader range of measures than those currently available on an immediate basis, particularly exclusive occupation of the home and possession of personal property (e.g. car, VISA or bank cards);
- on a temporary basis, temporary care and custody of the children, and a specific prohibition against selling or damaging joint property;

- it provides immediate protection for the victim; and
- it sends an immediate message that the perpetrator's behaviour is not acceptable.

(vi) Critical Success Factors

Without exception, jurisdictions with domestic violence legislation identified the most important critical success factors in its implementation to be intensive training beforehand and public awareness/education sessions to inform victims and the public of the existence of the legislation and remedies available. Other critical success factors cited include the use of a collaborative approach involving multiple departments and stakeholders and adequate consultation process to solicit the support of the community, the judiciary, and others.

Training of all sectors in family violence and in the specific roles of each component of the justice system is a critical factor in the successful introduction of any new legislation. It has been the experience of jurisdictions that training needs to be ongoing, to be updated to address emerging issues and concerns, and to involve multiple community stakeholders.

An iterative process needs to be devised to deal, on an ongoing basis, with emerging concerns among players in the justice and the non-justice sectors involved in providing services to family violence victims. Monitoring and evaluation is also necessary to identify problems early and intervene quickly and effectively to ensure the legislation is applied in the way it was intended.

(vii) Issues and Concerns

The short-term orders are used much more frequently than the long-term orders, which usually require legal assistance, and resources in most jurisdictions are insufficient to supply it. Legal representation for applicants is an issue in most jurisdictions. Although the longer-term orders were originally envisioned almost as extensions of the short-term orders, this rarely happens. Instead, the relevant provincial or federal legislation pertaining to custody, access, maintenance, and property division is being used to resolve these issues in the long term without recourse to the additional remedies available in the longer-term Victim Assistance Orders.

There remains a philosophical dispute in the field about when it is appropriate to use this legislation. Some believe its remedies applying to no contact and removal of the abuser are redundant applications of the *Criminal Code* arrest and release provisions, and that only where police have not arrested is it appropriate to use these remedies. Others say they can and should be used together, that the legislation should not supplant criminal charges and, indeed, should supplement criminal charges.

The degree to which this legislation is being used in addition to, instead of as a substitute for criminal charges, is not clear. Evaluation reports from Saskatchewan (1996 and 1998),[227]

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[227] Canada, Minister of Justice, *Review of the Saskatchewan Victims of Domestic Violence Act* by Prairie Research Associates (Ottawa: Department of Justice Canada, Research and Statistics Directorate, 1996) and *A Further Review of the Saskatchewan Victims of Domestic Violence Act* by Prairie Research Associates (Ottawa: Department of Justice Canada, Research and Statistics Directorate, 1999).

Alberta (2000)[228] and the Yukon Territory (1996)[229] found police officers using the orders where victims did not wish to pursue criminal proceedings and in cases where it appeared that evidence was not sufficient to do so.[230] However, in a good number of cases, the legislation was being used as a supplement to charging.

Other issues identified in jurisdictions with legislation include practical implementation issues such as the time it takes to contact a Justice of the Peace and issue an order, consideration of the reverse onus provision to eliminate automatic judicial review, and provision of Legal Aid resources to assist with the longer-term Victim Assistance Orders.

There is currently a case before the courts in Manitoba challenging the ability of the province to use section 127 of the *Criminal Code* for enforcement.[231] The case also charges that the Province is legislating in the area of criminal law which is outside its sphere of jurisdiction, making the legislation unconstitutional. Prince Edward Island also faced a legal challenge to its legislation. In Prince Edward Island, the inclusion of emotional abuse in the definition of family violence was contested but the court found that it was not too broad. The ability of the province to legislate and provisions regarding notice to the respondent were challenged. The Court said the legislation was within the competence of the provincial legislature, but found the notice provisions to be insufficient[232] and these were amended in 1998 by the government of Prince Edward Island.

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[228] Howard Research, *Implementation and Impact of the Protection Against Family Violence Act: Final Report* (Edmonton, Alberta, 2000).

[229] Canada, Minister of Justice, *Spousal Assault and Mandatory charges in the Yukon: Experiences, Perspectives, and Alternatives* by T. Roberts (Ottawa: Department of Justice Canada, Research and Statistics Division, 1996).

[230] *Ibid.*

[231] Respondents in Manitoba spoken to as part of the interjurisdictional review referred to this case.

Other issues include the ability of the legislation to apply to property on reserves, specifically the granting of exclusive occupation of the home by the victim. There is disagreement between the federal and provincial levels of government on this issue. In order for victims on reserves to be afforded the same degree of protection available to victims off reserve, one party's view is that Band Councils under the *Indian Act*[233] can pass a bylaw adopting the exclusive possession provision if they choose. The other party considers this to be a land issue, an area outside the purview of the Band. In practice, all but the exclusive home possession provisions are being used in Emergency Intervention Orders for victims resident on reserves. (While this situation applies to the Yukon Territory, only two First Nations have reserve land and intend to adopt the exclusive home possession provisions once land claims are settled. Alberta also faces this situation. Prince Edward Island and Manitoba have not had any difficulties to date with this issue.)

(viii) Domestic Violence Legislation in the United States

Every state in the United States has enacted a civil protection order statute, and the vast majority of these authorize the essential relief necessary to support a battered woman who wants to leave an abusive relationship.[234] Every state provides for emergency *ex parte* relief. A civil protection order may direct the abuser to stay away from the victim, to stop threatening her and to vacate the parties' residence. This *ex parte* order will protect the victim until trial. Civil Protection order statutes also provide for comprehensive post-trial relief. They may award the victim temporary use and possession of jointly owned property, temporary child custody, safe visitation arrangements for the non-custodial parent, and child support.[235] As in Canadian jurisdictions with domestic violence legislation, in the United States, the breadth of the civil protection order remedy is seen as an important supplement and valuable alternative to criminal prosecution. Although a civil protection order resolves a victim's family law problems quickly, the order expires in six to twelve months.

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[232] *A.L.G.C.* v. *Prince Edward Island*, [1998] P.E.I. J. No.15 (S.C. T.D.), online: QL (PEIJ).

[233] R.S.C. 1985, c.I-5, ss.81(1)(p.1), 81(1)(p.2).

[234] For an in-depth analysis of state civil protection order statutes, see C. F. Klein & L. I. Orloff, "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law"

(d) Conclusions and Recommendations Regarding Civil Remedies

In light of the concerns expressed by victims about having to leave their homes and about the stresses created by delays in Family Court processes, and based on the perceived benefits of the immediacy and breadth of additional remedies available to protect the victim and his/her children, it is recommended that Nova Scotia consider adopting domestic violence legislation as a supplement to the Framework for Action. Given the studies done and information available from other jurisdictions concerning usage rates for emergency orders and longer term orders, it appears that emergency protection orders are of particular value and that the provisions of greatest benefit to victims are those granting exclusive occupation of the home, temporary care and custody of the children, and a specific prohibition

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(1993) 21 Hofstra L. Rev. 801 at 1031-43.

[235] *Ibid.* at 954, 982 and 998.

against selling, converting, or damaging property. Provisions directing removal of the abuser and seizure of weapons are also important. Given the very low usage rates reported for longer-term orders and warrants of entry, the value of these provisions is less clear. The experience of other jurisdictions makes it clear that unless legal aid resources are adequate, these provisions will rarely be used, and that, in any case, lawyers often do not use the legislation, either because they are unfamiliar with it or because they prefer to use family law legislation to settle longer term custody, access, support and property issues.

In the event that such legislation is adopted in Nova Scotia, it is recommended that training be conducted well in advance of the introduction of the legislation and it include: (1) the dynamics of family violence; (2) the Framework policies and procedures and application of the *Criminal Code*; and (3) the elements of the civil legislation. The training modules developed for the initial round of training under the Framework, as well as materials from other jurisdictions with legislation, could be used as a basis for designing the training. Training should address the specific roles of those involved in responding to domestic violence. Community agencies should be involved early on in the development of training materials and in the delivery of training modules. Members of the practicing Bar will also require training through continuing legal education programming to familiarize themselves with the remedies available under the legislation.

Interagency coordination and monitoring are necessary to ensure the successful implementation of such legislation. **It is recommended that coordination and monitoring occur at both the local and provincial levels through interagency committees, and that, if**

implemented, the legislation be monitored through ongoing data collection and that it be evaluated within five years of its introduction.

Public education should also accompany the legislation to ensure the victims and the community are aware of it. Issues pertaining to the application of the legislation on reserves should be addressed in consultation with Aboriginal communities.

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APPENDIX A

FRAMEWORK *for* ACTION AGAINST FAMILY VIOLENCE

Nova Scotia
Province of Nova Scotia

Department of Justice

Public Prosecution Service

Family Violence Prevention Initiative

Department of Community Services

JUSTICE SYSTEM

POLICY ON FAMILY VIOLENCE

FRAMEWORK FOR ACTION

PREAMBLE:

Violence within families is a serious social problem - an abuse of power that robs victims of their dignity and leaves long-lasting scars.

Violence within families is pervasive - fundamental changes in public attitude are required so that this behaviour will not be tolerated.

Violence within families is a complex problem which cannot be solved by any single form of intervention. A coordinated, multidisciplinary approach is essential.

The justice system has a key role to play in responding swiftly and effectively to reports of family violence and by providing a legal framework that defines such violence as criminal behaviour.

PRINCIPLES:

Everyone has a right to live free of violence.

Response to family violence is a high priority of the justice system.

Safety of the victim is the overriding concern in responding to family violence.

Breaking the cycle of violence requires a coordinated, multidisciplinary approach in which justice agencies play a key role.

The justice system is accountable to the public for its response to family violence.

PARTNERSHIP:

The Department of Justice will work in partnership with other departments of government and the community to achieve the objectives outlined in the Framework for Action. The Family Violence Prevention Initiative will serve as the focal point for identifying opportunities for collaboration in a corporate approach to addressing family violence.

APPLICATION:

Family violence refers to abuse that occurs between and among persons who are related by affection, kinship and/or trust. This policy refers specifically to all forms of violence committed by spouses or partners in an intimate relationship, whether they be legally married, living together in a common-law relationship or dating. It can include physical, emotional and economic threats, including threats to children, friends, pets, property, stalking, harassment and every other form of violence.

This policy, which addresses violence between intimate partners, is the first component of a comprehensive strategy to address all forms of family violence. The Family Violence Prevention Initiative has developed protocols to address child and elder abuse in consultation with relevant government departments and community agencies.

POLICY AND PROCEDURES:

PROCEDURES FOR RESPONDING TO FAMILY VIOLENCE:

The response of criminal justice professionals to family violence has improved markedly over the past several years as a result of uniform charging policies and the commitment of individuals who work on the front lines.

Still, the collective impact of these efforts is insufficient and stronger measures must be taken to underscore the seriousness of family violence and structure the discretion exercised by front- line decisions-makers.

A pro-arrest, pro-prosecution policy will be implemented.

To this end, existing policy and procedure will be reviewed and amended to require of:

POLICE

The Department of Justice Policing Services Division, through consultation with the Nova Scotia Chiefs of Police Association, will develop a Case Management Investigation Procedural Policy, supportive of a Family Violence pro-arrest, pro-prosecution policy. The Case Management Investigation Procedure on Family Violence will contain the following guidelines:

- Immediate referral by dispatch to police in all reported cases of family violence
- Police response to and full investigation of all family violence cases
- Comprehensive case management (including evidence-gathering) at the scene to reduce the reliance on victim testimony
- Paramount concern for the safety of victims and children (including immediate referral to victim support services, escorted safe passage for retrieval of personal effects, if required, on-going communication with victims regarding the status and whereabouts of the perpetrator)
- Police shall refer victims to Victims' Services and/or local transition houses
- Charges to be laid in all cases where evidence supports such action. In cases where charges are not laid, a police report will be completed stating the reasons why charges were not laid.
- Arrest and removal of alleged perpetrator from the home in all cases where charges are laid
- Where there is a history of abuse or the victim fears for their safety, police shall not release on an appearance notice or promise to appear. When an arrest is made, the alleged offender will be held for a bail hearing before a justice of the peace or judge of the provincial court.
- Police shall request that conditions of release on bail be imposed by the justice of the peace.
- Police shall respond immediately to enforce reported violations of 'no contact' orders, peace bonds and civil restraining orders. Charges shall be laid and arrest made in all cases where reasonable and probable grounds occur.
- The Minister of Justice will direct that RCMP sub-divisions and municipal police forces of sixty officers or more dedicate resources to the establishment of a family crimes unit.

CROWN ATTORNEYS

The Public Prosecution Service will implement a policy for Crown Attorneys to address the following:

- Applications for judicial interim release should include a request for a 'no contact' or other protective order in all appropriate cases. For breaches of such orders, a request should be made to revoke bail and detain the accused in custody until trial.
- Victims and other witnesses shall be given an opportunity to meet with the Crown prior to trial.
- Victim testimony should be supported to the extent possible through use of other evidence
- Victims shall be referred to Victims' Services and/or local transition houses
- The Crown shall prosecute without delay all violations of court orders intended to ensure the safety of victims of family violence.

COURTS

- All cases of a criminal nature will be heard by the Provincial Court; this means that peace bond applications and common assault charges which the Family Court is empowered to hear will now be scheduled for hearing in the Province's criminal court.
- When scheduling cases in the Provincial Court, Clerks of the Court will be directed to give priority to cases involving violence between family members, and every effort will be made to ensure that cases will be concluded quickly.
- Clerks of the Provincial Court will be directed to give applications for peace bonds a high priority, with the goal of improving our present clearance rate, which is that 60% of such cases are heard and concluded within 20 days.
- The Minister of Justice will make representation to the Chief Judge of the Provincial Court and the Chief Justice of the Supreme Court to emphasize the need for denunciation and deterrence in sentencing of perpetrators of family violence, and to gain the support of the Judiciary for expeditious processing of these cases.

- Programs which will help to clear the Provincial Court docket so that time will be available for family violence cases will be vigorously pursued. Such programs include the Adult Diversion Project, which is now underway, and the Traffic Court Project, which is in the planning stages. These programs result in less serious cases being heard in a different forum, thereby freeing Judges and courtrooms for more serious matters.

CORRECTIONS

- Corrections officials shall ensure that victims are informed about the terms of probation orders and conditional release and that they know how to contact corrections staff in the event of a breach of the order.

- Presentence reports will include results of victim interviews, wherever possible.

- Probation officers will identify for the court the availability of intervention programs for perpetrators of family violence. The Department will work in cooperation with the Departments of Health and Community Services to evaluate existing programs for effectiveness and outcomes. From this evaluation, an enhanced intervention approach will evolve based on the model of collaboration established with the sex offenders treatment program.

- Victims shall be contacted when the conditional release of an inmate from custody is being contemplated (or when an inmate is unlawfully at large).

- Probation order conditions shall be carefully monitored and all violations reported immediately to the Crown.

- Police shall be informed in advance of any release of an inmate who is known to be a perpetrator of family violence.

The policy and procedures governing the response of criminal justice professionals to family violence must be developed and implemented in a manner which reflects a collaborative approach among all departments and agencies with a role to play in addressing family violence. The Family Violence Prevention Initiative will play a key role in working with the Department of Justice and the Public Prosecution Service to ensure that the new policy and procedures are integrated in a corporate, provincial response to family violence.

JUSTICE EDUCATION AND TRAINING:

Justice service providers require specific knowledge and skills to enable them to respond appropriately to incidents of family violence, which by their nature are complex, volatile and dangerous.

Training for criminal justice professionals must contain the following elements:

- understanding dynamics of abuse
- laws relating to family violence
- policy and procedure governing agency response
- protocols for inter-agency collaboration
- protocols with transition houses

A comprehensive training program, developed in consultation with the Nova Scotia Chiefs of Police Association and emphasizing the pro-charge, pro-prosecution policy, will be delivered to all police officers. The training will be delivered in conjunction with that provided to all Crown Attorneys.

Training will be delivered to all court clerks, justices of the peace, victims' services officers and corrections workers to ensure their understanding of and compliance with departmental policy and procedure respecting family violence.

The Department of Justice is committed to on-going professional development to ensure that skills and knowledge of service providers are continually reinforced and strengthened.

To ensure that the training delivered to justice workers is harmonious with that provided to other disciplines, all training programs will be developed in consultation with the Family Violence Prevention Initiative. The Department of Education, through the FVPI, will assist where appropriate in the development of training tools and will make space available through its community college system for the regional training of criminal justice professionals.

ACCOUNTABILITY:

Effective implementation of the new family violence policy will require significant change in the practices of service providers. To ensure compliance with the policy, agencies must continually monitor the response to family violence incidents. To assure the community that the justice system is responding appropriately and decisively, a mechanism must be established for regular public reporting.

Each justice agency will be required to implement a structured audit mechanism. This system will monitor response to family violence incidents and will include mandatory reporting of reasons in cases where charges are not laid or subsequently withdrawn. Victim satisfaction with criminal justice intervention will form part of the audit process.

A tracking system will be implemented to permit on-going monitoring of the processing of cases through the justice system. Outcome measures (to include such data as dispatch/charge rate, disposition and processing time) will be reported to the Family Violence Prevention Initiative, which will serve as the repository for family violence outcome measures generated by all departments.

VICTIM SUPPORT:

The prevalence of family violence is far greater than the number of incidents reported to the police. Many victims do not report because they have no confidence in the justice system. Many refuse to testify in court or recant due to fear of the perpetrator or the court process itself.

Safety of the victim must be the primary concern of the justice system. Victims must be supported throughout, to protect them from harm and to encourage their participation in the court process.

Justice-related services to victims are provided by various government and community agencies across the province. The level, type and source of services vary as a result of differing community needs and resources available.

The Departments of Justice and Community Services and the Family Violence Prevention Initiative will work with community-based interagency committees to ensure that all communities offer assistance to victims of family violence.

Services to victims will include the following:

- attend the scene of domestic violence, upon referral by the police, to provide immediate crisis intervention once the alleged perpetrator has been removed, and referral to appropriate services in the community
- communicate with victims as cases proceed through the justice system to convey details regarding the progress of the case and status of the alleged perpetrator

INTERAGENCY COORDINATION:

Improved collaboration and cooperation are required among all organizations and individuals with a role to play in addressing family violence.

It must be recognized that each agency is part of the larger community response system. Critical linkages between the various sectors must be identified and mechanisms developed to ensure adequate communication among the partners.

Justice agencies play a pivotal role in the interdisciplinary response to family violence. Justice representatives will participate in the development and implementation of protocols in community-based interagency committees throughout the province.

The protocols must be clearly articulated and published so that each agency and the public are aware of the role of each of the partners.

ADVOCACY:

It is essential that the public understands and accepts the role of the criminal justice system in responding to family violence. A public attitude which reflects abhorrence and intolerance toward this behaviour will support strong measures by justice agencies.

Criminal justice agencies will participate in public education initiatives, the goal of which is to enlist the support of the community in preventive efforts.

The Department of Justice will monitor the impact of legislation, programs and services and advocate for change when current strategies are deemed inadequate.

The Department of Justice will review the 'best practices' of other jurisdictions and commit to a program of continual improvement in services provided to victims of family violence in Nova Scotia.

September 1995

APPENDIX B

FRAMEWORK FOR ACTION AGAINST FAMILY VIOLENCE

NOVA SCOTIA

Department of Justice

April 1999

FRAMEWORK FOR ACTION AGAINST FAMILY VIOLENCE

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EXECUTIVE SUMMARY

Establishment of the Framework for Action Against Family Violence

In early 1995 three major reports on family violence were published. These reports revealed serious deficiencies in the response of the justice system to incidents of family violence.

In the spring of 1995, the Minister of Justice established a Family Violence Action Committee, a multi-disciplinary body with representatives from all components of the justice system, other provincial government departments, the Nova Scotia Advisory Council on the Status of Women, the Nova Scotia Barristers Society and community agencies directly involved in the provision of services to both victims and perpetrators of spousal/partner abuse. The Committee was established to provide direction and advice to the Department of Justice in the development of a comprehensive strategy to improve the response of the justice system to family violence.

On September 19,1995 the Premier, together with the Ministers of Justice and Community Services announced that $760,000 had been committed for an eighteen-month period to implement the Framework for Action Against Family Violence.

The Framework for Action was built on the recognition that:

- Clear direction on the response to family violence needed to be articulated for the benefit of justice workers, community agencies and the public;
- Justice workers required training to assist them to understand the dynamics of family violence, their specific responsibilities in responding to incidents and the role of other justice workers and community agencies. It was also recognized that the development and delivery of training needed to involve community agencies with experience in dealing with both victims and perpetrators of family violence;
- Victims of family violence require support and assistance;
- The justice system must be accountable for its response to family violence and for adherence to specific directives and protocols; and
- The effectiveness of the justice initiative would be dependent on successful collaboration and cooperation with community resources with a role to play in addressing family violence.

Accordingly, the Framework for Action contains the following elements:

- Improved procedures for responding to family violence (pro-arrest, pro-charge, pro-prosecution policy, based on the Quincy Massachusetts program)
- Comprehensive training program for all justice workers
- Enhanced victim support services
- Interagency coordination
- Accountability
- Advocacy

Implementation of the Framework:

Integrated Policies and Procedures
In January 1996 a coordinator was hired for an eighteen month period to assist justice operational managers to develop integrated policy and procedures and to design and deliver training programs to all justice workers. The Minister of Justice issued a directive to all justice agencies underscoring Government's commitment to the Framework for Action and detailing the requirements for implementing the pro-arrest, pro-charge, pro-prosecution policy.

Training
Using a train-the-trainer model, 59 trainers delivered a standardized two-day training program to 3000 justice workers, including police, Crown attorneys, court officials, victims' services officers and corrections workers. The objectives of the training program were three-fold: a) to convey general information about the phenomenon of domestic violence; b) to inform justice workers about their specific responsibilities within the Framework for Action; and c) to build linkages between the justice system and community agencies providing services to victims and perpetrators of spousal/partner violence.

Enhanced Victim Support Services
The Framework for Action acknowledged the need to augment services to victims of spousal/partner abuse. Accordingly, Government provided $950,000 to eight community-based victim support services over the three year period April 1996 - March 1999.

Interagency Coordination
Coordination at a provincial level was provided through the Nova Scotia Family Violence Prevention Initiative. Interagency committees performed a similar function in providing guidance to Framework activities in all regions of the Province.

Accountability

A committee, composed of representatives of the Family Violence Prevention Initiative, Nova Scotia Advisory Council on the Status of Women, THANS (Transition House Association of Nova Scotia), RCMP and municipal police forces, and Department of Justice, was established to develop and oversee the accountability framework for the initiative.

Data on the flow of cases through the criminal justice system was collected. The Framework further required that each component of the justice system establish an audit mechanism to review cases of spousal/partner abuse to ensure that the policies, procedures (pro-arrest, pro-charge, pro-prosecution) were being followed.

Advocacy

The Department of Justice, as a member of the Family Violence Prevention Initiative, has participated in public education and awareness initiatives in order to enlist the support of the community in preventive efforts.

The Department of Justice has monitored legislative and program changes in other jurisdictions and reviewed relevant research in order to keep abreast of 'best practices'. In partnership with the Nova Scotia Advisory Council on the Status of Women and the FVPI, the Department has sponsored consultations on issues relevant to family violence; for example, criminal harassment, provocation and self-defense, in order to provide a forum for multi-disciplinary input into decisions regarding program, policy and legislative change.

Impact of the Framework for Action:

Justice System Response to Family Violence

In April 1996 a data collection process was initiated to collect information on spousal/partner violence reported to the police. A total of 6,964 incidents were reported to police during the period April 1996 to August 1998. Data relating to the processing of these cases by the criminal justice system was compared to the results reported in the 1995 Nova Scotia Family Violence Tracking Project to measure the impact of the Framework policies.

An analysis of the results reveals that the Framework for Action has had a significant impact on the response of the justice system to incidents of family violence. The pro-arrest, pro-charge, pro-prosecution policy has resulted in a significantly higher charge rate and conviction rate. Police and other justice officials have also demonstrated a greatly increased propensity to refer victims to victim support services. The average time elapsed from first court appearance to final outcome declined by twenty per cent. Sentencing practices, however, do not appear to have changed significantly as a result of the Framework. In fact, the probability of incarceration, based on the number of incidents reported to police, remained unchanged from the 1995 Tracking Project results.

Review of Policies and Procedures

Eighteen months following the implementation of the Framework for Action, consultation sessions were held with managers and front-line workers from all components of the justice system. The purpose of the consultations was to elicit views regarding the effectiveness and workability of the Framework and its related policies and operational procedures.

Overall, the majority of respondents indicated that the Framework protocols had had a very positive impact on the response to spousal/partner violence. Each component of the system was made more aware of their own responsibilities and those of other components. Many individuals remarked on the very useful linkages which had been formed with community agencies providing services to victims and perpetrators of spousal/partner abuse.

The need for increased resources was a common theme - for ongoing training and to promote the more effective use of evidentiary tools such as video cameras. Some respondents voiced concern that the very effectiveness of the Framework, with the resultant increase in the number of cases processed by the justice system, created problems as the courts were not equipped to deal with the increased volume.

The majority of representatives expressed the view that while the willingness to share information between components of the justice system had improved markedly, efforts were being stymied due to the lack of an integrated system for the electronic transfer of information.

Concern was voiced regarding the lack of men's intervention programs. Many probation orders contain the requirement for offenders to seek treatment and lack of access was described as a major gap in the Framework initiative.

A common theme in a number of areas was frustration relating to judicial practices and sentencing patterns. Justice workers indicated their commitment to the Framework and their adherence to policies are all for naught if the judge does not take a serious view of family violence incidents.

Evaluation of the Victim Support Service Program

An independent review of the eight victim support service projects, conducted by Gardner Pinfold Consulting Economists in December 1997, concluded that the information and support services provided to victims were an essential component of the successful implementation of the Framework for Action and recommended continued delivery of such services. The evaluators also recommended that early intervention and advocacy services be provided on a pro-active basis to ensure that as many victims as possible gain effective access.

The evaluation report identified duplication of services provided by the projects, RCMP victim assistance workers, Department of Justice Victims' Services and transition house outreach programs. It was recommended that a review of service boundaries be undertaken to avoid duplication and promote effective service delivery. The evaluators identified underutilization of the project services by aboriginal peoples, Afro-Canadians and recent immigrants, and recommended that projects ensure measures are implemented to provide support to minority groups and those living in rural areas.

The evaluators recommended that the program model for the future should provide early intervention and advocacy in an integrated fashion. Service delivery should be proactive and projects should operate in partnership with police to facilitate referrals. The evaluators indicated that delivery could be coordinated either by a transition house or police agency, depending on community preference.

The report recommended that funding for the projects should be linked directly to critical area needs as determined by demand levels and a service gap analysis.

Subsequent to the completion of the independent evaluation in December 1997, Government provided additional funding for the eight projects until March 31, 1999, with the provision that a review be completed to determine the continued relevance of the service. Project guidelines were developed based on the recommendations contained in the Gardner Pinfold report. Funding to the projects was approved based on proposals submitted in accordance with these guidelines.

An internal review was undertaken by the Departments of Justice and Community Services based on project activity during the period April 1, 1998-October 31, 1998. The review examined the relevance of the service in supporting the pro-arrest, pro-charge, pro-prosecution policy of the Framework for Action. The objective of the projects within the Framework for Action was to provide enhanced services to victims of family violence to support their participation in the justice process. Assistance to victims was intended to address gaps in service at the local level. For the purpose of the review, continued relevance of the projects was defined as proactive response, meeting client need during the early intervention stage of the criminal justice process, coordinated follow-up with other community agencies, and non duplication of service with existing programs.

Although data was extracted from individual projects, the study examined the service model as a whole. It is clear that in some cases projects were successful in providing a service in support of the funding mandate, with existing services enhanced through strengthened community partnerships, and effective referral protocols developed with policing agencies. Some projects made significant efforts in identifying service gaps within the community and clients who might not otherwise have received service through existing agencies. The future direction of the service will necessarily build upon these successes.

The study concludes, however, that when relevance is defined for the overall service as proactive response; meeting client needs during the early intervention stage of the criminal justice process; coordinated follow up; and non-duplication of service; the relevance of the service, as it is currently structured, is in question. Though response is generally proactive, there are sometimes extended periods between referral and client contact; the service is most often provided as a follow-up rather than an early intervention service; and not all cases indicate police involvement, or reportedly involve intimate partners or any family relationship. Moreover, as the services provided are primarily services now offered by existing agencies, duplication in service is evident. Finally, a high percentage of project resources is being expended for administrative activities relative to expenditures for service delivery.

Conclusions and Recommendations:

Critical Success Factors

Training and Protocol Development

The ambitious training program (3000 justice workers trained over an 18-month period) was held by many to be the most important critical success factor. In utilizing a train-the-trainer model, all components of the justice system have a stake in the success of the initiative. The training was comprised of a sensitization component in which the dynamics of spousal/partner violence was discussed. Equally important was the focus on policy and procedure for each sector of the justice system, the interconnectedness of the policies and the important relationship with community agencies. Many respondents recommended that the training model used in the Framework for Action initiative be used when other major criminal justice policies are introduced.

Victim Support

Support for victims is critical. The emotional and physical impact of spousal/partner violence is profound and victims have reported feeling doubly victimized through their involvement in what many perceive to be a hostile and confusing criminal justice process.

Despite the development of protocols to lessen the reliance on victim testimony, the criminal justice system still needs the cooperation and participation of victims to successfully prosecute spousal/partner violence. The early intervention and advocacy services provided through the victim support service program were assessed as an essential component of the successful implementation of the Framework for Action.

Interagency Collaboration

The Framework for Action Against Family Violence was provided strong support by community organizations throughout the Province. Under the leadership of the Family Violence Prevention Initiative, interagency committees on family violence participated in the training of criminal justice workers and in managing the victim support service projects.

Public Awareness

There is no doubt that there has been an increased awareness that family violence is a crime and a serious social problem. The publicity surrounding the implementation of the Framework For Action and the ongoing efforts of the FVPI has served to heighten public awareness. It is likely that this has been a factor in influencing family members or support persons of victims to encourage them to report incidents of family violence to police.

Recommendations

The lessons learned during the first phase of the Framework should be considered as building blocks to lay a foundation for the continued improvements which are essential to address the deficiencies which still exist in the response of the justice system to family violence. The following recommendations address the improvements which are required to ensure that justice workers possess and use the necessary tools and skills to respond effectively to spousal/partner violence; that victims have access to the information and support they require; that collaboration and cooperation between community and government agencies are fostered; and that the justice system is accountable to the public for its response to family violence.

1.0 Enhanced Policy And Procedures

1.1 Enhance outreach services to those living in Aboriginal communities and to visible minorities to support victims and to increase reporting of spousal/partner violence.

1.2 Improve access to interpreters to facilitate communication between police and citizens who do not speak English.

1.3 Ensure the effectiveness of the 911 system in facilitating police dispatch for calls reporting spousal/partner violence.

1.4 Enter peace bond information on the CPIC system to ensure that police are aware of these orders when they respond to spousal/partner violence calls.

1.5 Review the practice of taking photographs and videotaped statements to promote consistency across the Province.

1.6 Develop a practical and effective process for facilitating police access to information regarding orders of the Family Court or Supreme Court (regarding family matters).

1.7 Review the *Emergency 911 Act* to determine if it should be amended to permit 911 recordings to be released for purposes of criminal prosecution.

1.8 Ensure that procedures are in place in all areas to ensure that victims are informed regarding interim release and sentencing outcomes.

1.9 Ensure that Crowns are aware of and follow the policy requiring them to refer victims to Victims' Services.

1.10 Ensure that spousal/partner violence cases are flagged and that relevant information is shared to trigger the application of the Framework for Action procedures at all stages of the justice system from arrest through court disposition.

1.11 Explore, through the provincial Access to Justice initiative, the feasibility of electronic exchange of information.

1.12 Conduct a review of the use of peace bonds in spousal/partner violence cases to address the concerns which have been voiced by victims, community agencies and justice workers.

1.13 Develop and implement a service delivery model to improve access to men's intervention programs.

1.14 Ensure that great care is exercised in screening participants for involvement in alternative dispute resolution and mediation programs which are implemented in conjunction with the establishment of the new Family Division of the Supreme Court and Restorative Justice Initiatives. A history of family violence is a reflection of a power imbalance in the spousal relationship which can mean that the minimum conditions for involvement in ADR and mediation cannot be met.

2.0 Training

2.1 Develop a strategy for delivering an ongoing training program in order to ensure that all justice employees are familiar with the Framework policies and procedures. The strategy should be developed by representatives from all components of the justice system, together with interested community agencies,

2.2 In light of the very serious concerns raised by justice workers and community agency representatives regarding sentencing practices of the judiciary, it is recommended that the Minister of Justice bring this report to the attention of the Chief Justice of the Province and the Chief Judges of the Provincial and Family Courts. It is recognized that, in keeping with the principle of judicial independence, the Court is responsible for developing the training agenda for the judiciary.

3.0 Victim Support

3.1 It is recommended that the Departments of Justice and Community Services, based on the results of the review of the victim support service program, identify a service model which reflects the critical success factors identified in the review. The model should build on the experience gained and the contributions made by the eight projects, their staff and volunteers since April 1996. Efforts should be made to ensure victim access to service province-wide; promote linkages between the program and the criminal justice system; and optimize the use of resources for service delivery as opposed to administration.

4.0 Accountability

4.1 Consultations with criminal justice workers revealed considerable variability across the Province with respect to the interpretation and implementation of the Framework policies. Senior management of criminal justice agencies convey to their staff the importance of policy when staff performance is assessed by the degree to which they adhere to policy. Deficiencies in the response of any one component of the justice system jeopardizes the effectiveness of the system as a whole. It is therefore recommended that the Minister of Justice require each component of the criminal justice system to formally restate their commitment to the Framework for Action Against Family Violence and articulate the means by which they will monitor adherence to the Framework policies.

5.0 Interagency Collaboration

5.1 The Family Violence Prevention Initiative was established as a community/government partnership to provide a focal point for promoting collaboration in efforts to prevent and respond to family violence. It is essential that all participating government departments and community agencies commit to the overall mission of the FVPI and are accountable for the achievement of agency-specific objectives related to the mission. Government has an important leadership role to play and it is recommended that the Deputies' Committee on Social Policy reconfirm the mandate of the FVPI and establish the necessary accountability framework.

5.2 It is recommended that the Department of Justice coordinate a focused consultation with key community and justice system stakeholders to review the experience of provincial jurisdictions which have enacted provincial/family violence legislation and to determine, in light of the results obtained from the Framework for Action, whether the adoption of such legislation would benefit victims of spousal/partner violence and their children.

6.0 Next Steps

6.1 It is recommended that the Department of Justice/Public Prosecution Service Family Violence Committee respond to the recommendations of this report in order to build on the strengths of the initial phase of the Framework for Action Against Family Violence.

6.2 It is further recommended that the Department of Justice, in partnership with the Family Violence Prevention Initiative, undertake a review of the viability and effectiveness of innovative dispute resolution processes used as an adjunct to the formal justice system in responding to spousal/partner violence.

FRAMEWORK FOR ACTION AGAINST FAMILY VIOLENCE

1.0 INTRODUCTION

1.1 Establishment of the Framework

On April 4, 1995 two major reports on family violence were tabled in the House of Assembly. The Report of the Nova Scotia Family Violence Tracking Project and *Changing Perspectives*: A Study of Spousal Homicides revealed serious deficiencies in the response of the justice system to incidents of family violence.

The Nova Scotia Family Violence Tracking Project, at that time the most comprehensive study of family violence in Canada, tracked all cases of family violence reported to police over the six month period from April 1 to September 30, 1992. Of the 929 cases of spousal/partner abuse reported to police, only 44% resulted in charges. Although 40% of the incidents involved threats, only 8% of these resulted in charges. Abusive incidents resulting in calls to the police were rarely isolated events, as two-thirds of the victims had a history of abuse. Approximately 40% of the victims were found to be reluctant to proceed with the court process, and of these, two-thirds ultimately recanted or failed to appear in court as witnesses. Punishment of offenders did not appear to be severe: only 28% of the convicted perpetrators were incarcerated, half for less than thirty days.

Changing Perspectives provides an analysis of seventeen cases of intimate partner homicides. The study identified a number of barriers to the effective and timely identification of spousal/partner violence and provided recommendations to a number of government agencies and community organizations.

The report of the Law Reform Commission of Nova Scotia on domestic violence, released in February 1995, reached similar conclusions and called on Government to assign a high priority to improving the response to family violence. Each of the reports recommended that the justice system adopt a pro-arrest, pro-charge, pro-prosecution policy.

1.2 Response to the Reports

In the spring of 1995, the Minister of Justice established a Family Violence Action Committee, a multi-disciplinary body with representatives from all components of the justice system, other provincial government departments, the Nova Scotia Advisory Council on the Status of Women, the Nova Scotia Barristers Society and community agencies directly involved in the provision of services to both victims and perpetrators of spousal/partner abuse. The Committee was established to provide direction and advice to the Department of Justice in the development of a comprehensive strategy to improve the response of the justice system to family violence.

On September 19,1995 the Premier, together with the Ministers of Justice and Community Services announced that $760,000 had been committed for an eighteen-month period to implement the Framework for Action Against Family Violence.

1.3 Elements of the Framework for Action Against Family Violence:

The Framework for Action was built on the recognition that:

- Clear direction on the response to family violence needed to be articulated for the benefit of justice workers, community agencies and the public;
- Justice workers required training to assist them to understand the dynamics of family violence, their specific responsibilities in responding to incidents and the role of other justice workers and community agencies. It was also recognized that the development and delivery of training needed to involve community agencies with experience in dealing with both victims and perpetrators of family violence;
- Victims of family violence require support and assistance;
- The justice system must be accountable for its response to family violence and for adherence to specific directives and protocols; and
- The effectiveness of the justice initiative would be dependent on successful collaboration and cooperation with community resources with a role to play in addressing family violence.

Accordingly, the Framework for Action contains the following elements:

- Improved procedures for responding to family violence (pro-arrest, pro-charge, pro-prosecution policy, based on the Quincy Massachusetts program)
- Comprehensive training program for all justice workers
- Enhanced victim support services
- Interagency coordination
- Accountability
- Advocacy

The complete text of the Framework for Action Against Family Violence is provided in Appendix 'A'.

2.0 IMPLEMENTATION OF THE FRAMEWORK FOR ACTION AGAINST FAMILY VIOLENCE

2.1 Integrated Policies and Procedures

In January 1996 a coordinator was hired for an 18 month period to assist justice operational managers to develop integrated policy and procedures and to design and deliver training programs to all justice workers.

A committee, composed of representatives from the RCMP, municipal police services, Public Prosecution Service, and the Department of Justice Correctional Services, Courts and Registries, Policy, Planning and Research and Victims' Services Divisions developed integrated operational procedures. The procedures reflected the pro-arrest, pro-charge and pro-prosecution policy and were integrated such that, for example, a referral required of the Public Prosecution Service to Victims' Services was incorporated in the operational procedures of each agency.

On March 28, 1996 the Minister of Justice issued a directive to all justice agencies underscoring Government's commitment to the Framework for Action Against Family Violence and detailing the requirements for implementing the pro-arrest, pro-charge, pro-prosecution policy. In compliance with the *Public Prosecutions Act*, the directive was published in the *Royal Gazette*.

2.2 Training

A train-the-trainer model was adopted in order to ensure that training could be provided to all justice workers in the Province by June 30, 1997. Fifty-nine individuals - from police agencies, Public Prosecution Service, court administration, correctional services and Victims' Services - volunteered to be trainers. An intensive five-day training session for these trainers was held in March 1996. An overview of the training curriculum is presented in Appendix 'B'. Topics addressed included the dynamics of spousal/partner violence, elements of the Qunicy model, adult learning theory, community resource availability, and the operational policies for responding to spousal/partner abuse. The objectives of the training initiative were three-fold: (a) to convey general information about the phenomenon of domestic violence; (b) to inform justice workers about their specific responsibilities and accountabilities within the Framework for Action; and (c) to build linkages between the justice system and community agencies providing services to victims and perpetrators of spousal/partner violence. The curriculum was developed in consultation with all components of the justice system and with representatives from community agencies.

The trainers were responsible for delivering a standardized two-day training course to all justice workers. Each trainer was provided with a package of presentation materials to ensure consistency in course content. Community agency representatives delivered a component of the training, in order to stress the importance of the partnership between the justice system and community agencies. Each session was evaluated by participants, the majority expressing a favourable response to the curriculum, particularly with respect to the integrated nature of the policies.

By June 30, 1997 approximately 3000 justice workers had received training. The magnitude of this accomplishment is a result of the dedication and extraordinary efforts of the coordinator, Raymond Cusson, and the 59 trainers.

2.3 Enhanced Victim Support Services

The Framework for Action acknowledged the need to augment services to victims of spousal/partner abuse. It was the recommendation of the Family Violence Action Committee that interagency committees be asked to define the type of service required to address the most critical deficiencies in their geographic area.

With the assistance of the Family Violence Prevention Initiative (FVPI), the Department of Community Services and the Advisory Council on the Status of Women, consultations with interagency committees were held in October 1995. In excess of 200 individuals participated in these sessions which were held in five locations throughout the Province. Communities were provided with guidelines to assist them in the process of developing options for services to victims required to support the pro-arrest, pro-charge, pro-prosecution policy of the Framework for Action Against Family Violence (Appendix 'C').

Objectives of the Victim Support Service Program were:

- to address the most critical service gaps for victims of spousal/partner abuse, as defined by service providers in the community;
- to foster a partnership between agencies and organizations most involved in providing services to victims of spousal/partner violence;
- to build on, rather than duplicate, existing resources and services; and
- to provide a cost-effective response to serve the needs of victims of spousal/partner violence.

A committee, composed of representatives from the Family Violence Prevention Initiative and the Departments of Justice and Community Services, reviewed proposals. Funding in the amount of $500,000 was provided to eight community projects for an 18-month period commencing April 1996.[1]

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[1] Additional funding in the amount of $446,667 was provided to support the operation of the 8 projects until March 31, 1999.

FRAMEWORK FOR ACTION AGAINST FAMILY VIOLENCE
VICTIM SUPPORT SERVICES

SPONSORING AGENCY	GEOGRAPHIC AREA SERVED	TYPE OF SERVICE	FUNDING (to March 1999)	START DATE
Chrysalis House Assoc. "Annapolis Valley Peer Advocacy Network"	Annapolis, Kings, Hants	• Transition house-based advocacy service • 1 Coordinator • Volunteers	$144,375	April 1996
Cape Breton Interagency "C.B. Family Violence Intervention Project"	Cape Breton Island	• Police-based crisis intervention service • 3 Coordinators (1 FT, 2 PT) • Volunteers	$192,500	May 1996
Tearmann House "Advocacy for Abused Women"	Antigonish, Guysborough, Pictou	• Transition house-based early intervention and advocacy service • builds on 24 hr. crisis intervention provided by Tearmann & Naomi Societies • 3 Coordinators (1 FT, 2 PT)	$144,375	April 1996
Cumberland Interagency Committee "Cumberland County Victim Support Framework Project"	Cumberland	• Transition house-based crisis intervention • 1 Coordinator • Volunteers	$ 66,668	June 1996

SPONSORING AGENCY	GEOGRAPHIC AREA SERVED	TYPE OF SERVICE	FUNDING (to March 1999)	START DATE
Avalon Centre/Bryony House "Justice Outreach Project"	Halifax Regional Municipality	• 1FT coorinator and 1 PT community outreach advocacy worker	$140,000	Oct. 1996
Lunenburg/Queens "Family Violence Victim Services Coordinator Project"	Lunenburg/Queens	• police-based crisis intervention & advocacy service • 1 Coordinator • Volunteers (link with RCMP Victim Assistance volunteers)	$ 87,500	July 1996
RCMP "Family Violence Intervention Project"	Colchester/East Hants	• police-based crisis intervention • 1 coordinator • volunteers	$ 87,500	
RCMP "Family Violence Intervention Project"	Shelburne, Yarmouth	• Police-based crisis intervention • 1 coordinator • Volunteers	$ 90,417	Barrington - June 1996

2.4 Interagency Coordination

The Nova Scotia Family Violence Prevention Initiative is a multi-disciplinary, community/government partnership which aims to foster a collaborative effort to eliminate family violence. The FVPI partners meet on a regular basis, both centrally and in communities throughout Nova Scotia. The Department of Justice has made regular status reports to the FVPI Committee regarding the Framework for Action, providing an opportunity for other government departments and community representatives to offer input and recommendations. Interagency committees perform a similar function in providing guidance to Framework activities in all regions of the Province.

2.5 Accountability

A committee, composed of representatives of the Family Violence Prevention Initiative, Nova Scotia Advisory Council on the Status of Women, THANS (Transition House Association of Nova Scotia), RCMP and municipal police forces, and Department of Justice, was established to develop and oversee the accountability framework for the initiative.

In April 1996 a data collection process was implemented to collect information on spousal/partner violence reported to police in the Province. Data on the flow of these cases through the justice system was also collected. The results of this data collection process are presented in Chapter Five.

The Framework further required that each component of the justice system establish an audit mechanism to review cases of spousal/partner abuse to ensure that the policies, procedures (pro-arrest, pro-charge, pro-prosecution) were being followed.

2.6 Advocacy

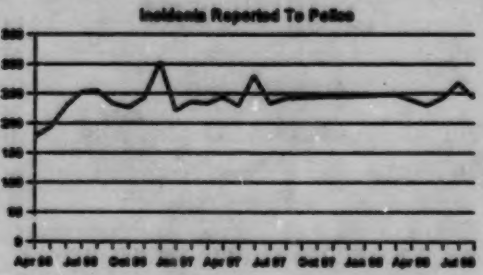
The Department of Justice, as a member of the Family Violence Prevention Initiative, participates in public education and awareness initiatives in order to enlist the support of the community in preventive efforts.

The Department of Justice monitors legislative and program changes in other jurisdictions and reviews relevant research in order to keep abreast of 'best practices'. In partnership with the Nova Scotia Advisory Council on the Status of Women and the FVPI, the Department has sponsored consultations on issues relevant to family violence; for example, criminal harassment, provocation and self-defense, in order to provide a forum for multidisciplinary input into decisions regarding program, policy and legislative change.

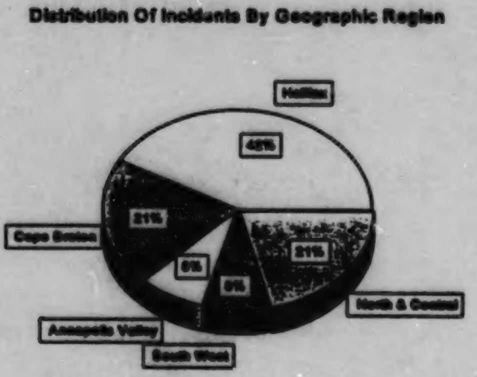
3.0 JUSTICE RESPONSE TO SPOUSAL/PARTNER VIOLENCE INCIDENTS[2]

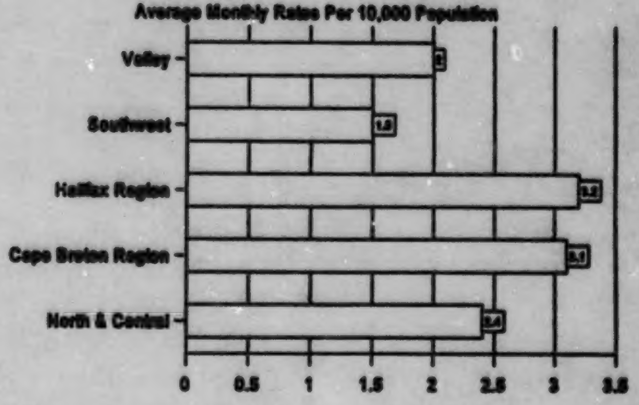
3.1 Police Response

In April 1996 a data collection process was initiated to collect information on spousal/partner violence reported to the police. A total of 6,964 incidents were reported to police during the period April 1996 to August 1998.


Incidents Reported To Police

Apart from the initial start-up period and the peaks in December 1996 and June 1997, the number of incidents reported remained fairly stable (average 244 incidents/month).


Distribution Of Incidents By Geographic Region


Average Monthly Rates Per 10,000 Population

Annapolis Valley	Counties of Kings, Annapolis and eastern part of Digby County
South West	Counties of Yarmouth, Queens, Shelburne and Lunenburg and western part of Digby County
Halifax	all of Halifax Regional Municipality, except Eastern Shore
Cape Breton	all of Cape Breton Island

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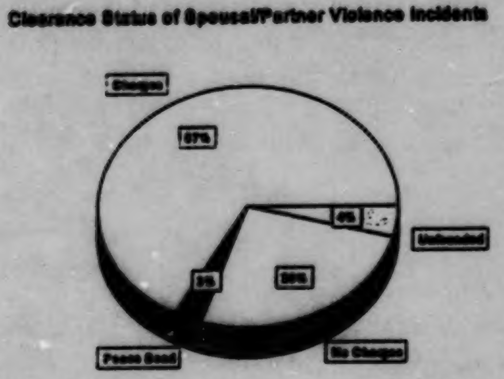
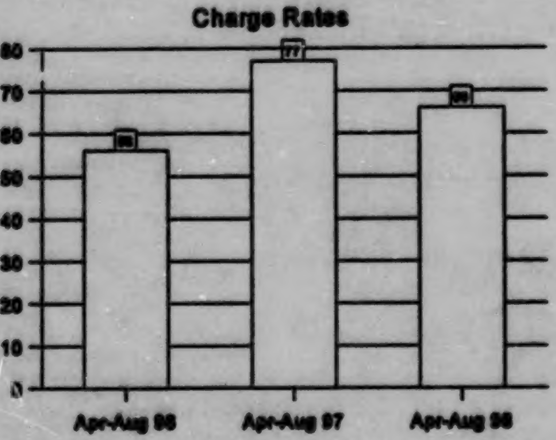
[2] The full text of the data analysis is presented in Appendix 'D'.

North and Central Counties of Pictou, Cumberland, Hants, Colchester, Antigonish, Guysborough and part of the Eastern Shore



When peace bonds and unfounded incidents are removed, the charge rate increases from 67% to 72% for the 29-month period. This compares favourably with the 44% clearance rate reported in the Nova Scotia Family Violence Tracking Project.[3]

Charge rates rose significantly from 1996 - 1997, but have decreased in the most recent reporting period.



A sample of 746 incidents was randomly selected from the total of 3043 incidents reported to police during the period April 1996 to March 1997. Police agencies provided detailed information regarding these incidents. For occurrences that resulted in criminal charges, linkages were made to the courts to determine outcomes. In cases where a finding of guilt was made, information on sanctions imposed was also collected.

Police dispatch rate:	Overall 85%
No dispatch:	110 incidents (15%)

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[3] Throughout this Chapter, comparisons are made to the data reported in the 1995 Nova Scotia Family Violence Tracking Project. The project tracked a total of 929 cases reported to police during the period April - September 1992.

Primary reasons for no dispatch were that the victim came to the police station or case was deemed a non-emergency. The dispatch rate reported in the Tracking Project was 87%.

Median Response Time:		Tracking Project:
Metro	6 minutes	7.5 minutes
Other municipalities	4 minutes	5.0 minutes
RCMP	15 minutes	16.5 minutes
Overall	7 minutes	9.0 minutes

Given the rural nature of most RCMP policing, the longer response times should not be surprising.

3.2 Characteristics of the Incidents

In the 746 incidents, 90% of the victims were female and 10% male.

Victim-Suspect Relationship by Gender

Relationship	Number	Percent
Male Suspect-Male Victim	1	<1%
Male Suspect-Female Victim	671	90%
Female Suspect-Male Victim	72	10%
Female Suspect-Female Victim	2	<1%
Total	746	100%

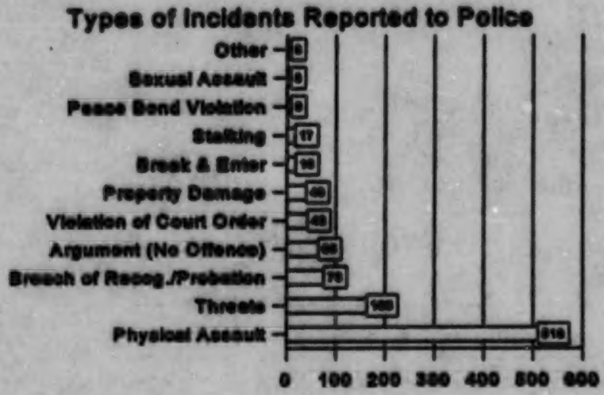
This ratio is identical to that reported in the Tracking Project.

Age of Victims/Suspects

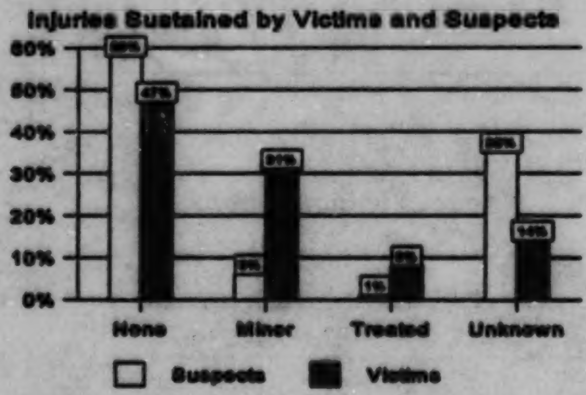
	Average	Median	Range
Victim	33	32	16-71
Suspect	35	34	17-74

Married and common-law relationships comprised 56% of all incidents, while former relations (ex-spouse, ex-boyfriend/girlfriend) comprised 25%.

Physical assaults were reported in 68% of the incidents. Force was used or threatened in 594 of the 746 incidents.



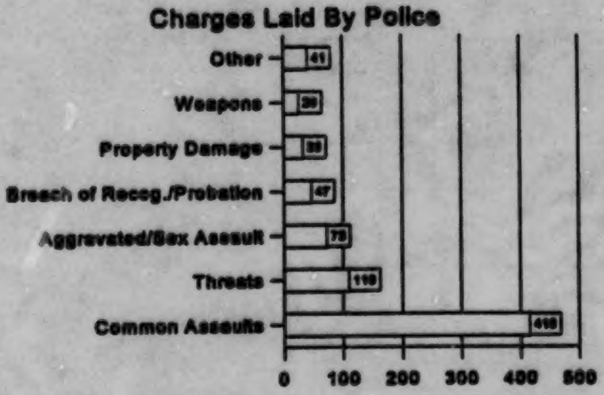
A prior history of spousal/partner violence between the same partners existed in 42% of the incidents.



Children under the age of 16 were in the home at the time of the incident in 35% of the cases.

Alcohol and/or drug use by the suspect was a factor in 49% of the incidents.

Forty-four percent of the victims (325) indicated they wished police to lay charges.



Police laid charges in 509 of the 746 incidents (68%). This is a significant increase over the 44% charge rates reported in the Tracking Project.

Charges were not laid in 237 of the 746 incidents (32%). The two most frequently-cited reasons for no charges being laid were insufficient evidence (118/237, 49%) and unfounded complaints (37/237, 16%).

Where charges were laid, it took, on average, 21 days from when the incident was first reported until the accused's first appearance in court.

3.3 Referral to Victims' Services

Police made referrals to a victim support service in 406 (80%) of the cases where charges were laid. The most frequent referrals were to the RCMP victim assistance program (145/19%), municipal victim assistance program (145/19%) and to transition houses (121/16%). The number of cases in which referrals were made increased sharply during the reporting period from 9% in April 1996 to 78% by March 1997.

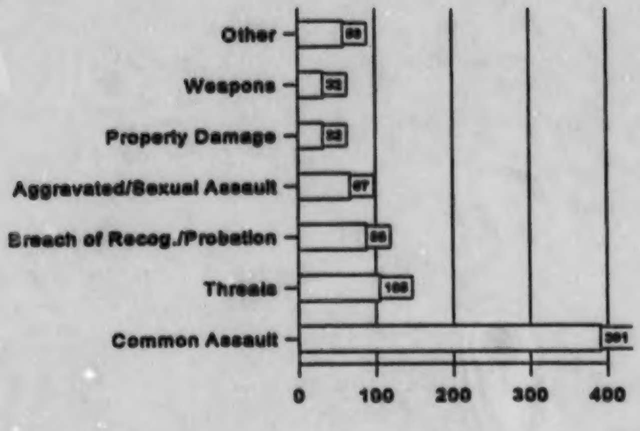
In the 509 cases where charges were laid, referrals were made to Victims' Services (Department of Justice) in 312 cases (61%). Almost 1/3 of the referrals originated with Crown attorneys (31%), followed by police-based victim assistance programs (17%) and police agencies (16%).

Referrals to Victims' Services by Referring Agency

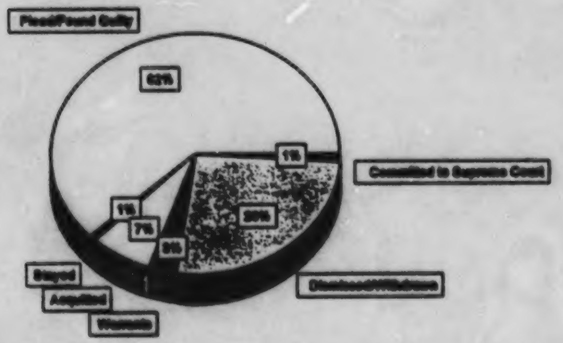
Referring Agency	Percentage of Referrals
Crown Prosecutor	31%
Police Victim Assistance Program	17%
Police Agencies	16%
Corrections	9%
Community Victim Assistance Program	7%
Self-Referral	6%
Unknown Referral Source	6%
Other	4%
Court	2%
Transition Houses	1%
Total	312

3.4 Court Process

Charges Heard In Court[4]



Court Outcomes



The conviction rate of 65% compares favourably with rates for similar offences (60%) in adult provincial courts over a similar time frame (1996-97). It is also significantly higher than the 57% conviction rate documented in the Tracking Study.

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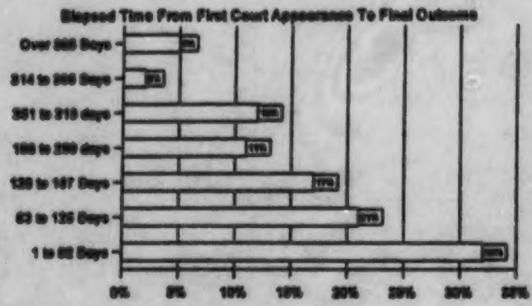
[4] Court information was obtained by manually linking detailed incidents with data held at the court information system (JOIS). Of the 509 cases where charges were laid by police, linkages to JOIS were made for 459 (90%) of these police incidents.

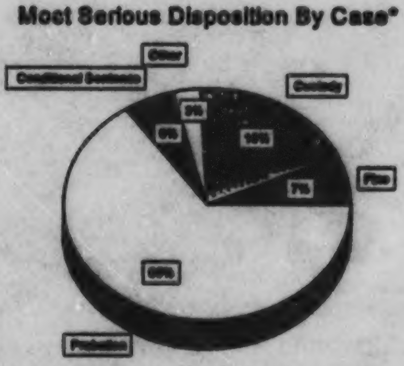
Crowns reported a number of reasons why cases were withdrawn/dismissed[5]: victim refused to appear in court; victim recanted during trial; accused entered into peace bond and public interest (both partners charged in the same incident).

For cases where court hearings were scheduled, Crowns reported meeting with victims in 69% of the cases. Reasons for meetings not being conducted included: accused changed plea prior to hearing date/victim hostile toward Crown.



On average, it took 144 days from first appearance to final disposition (median 114 days). With respect to the 'entire' process, it took an average of 180 days (median 133 days) from when the incident occurred to a final court disposition.

3.5 Case Dispositions



*Note that a case can comprise more than 1 charge.

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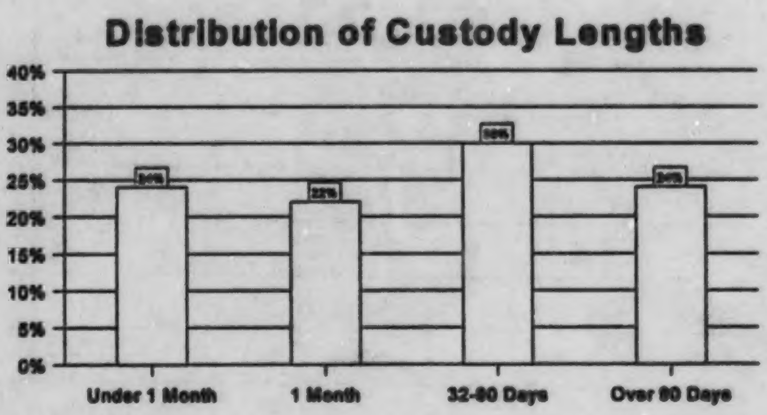
[5] Data based on a sub-set of 150 cases randomly selected from the reporting period. Complete data was gathered for 119 of the 150 cases.

Conditions of probation included non-association (53%), drug/alcohol abstention (28%), and community service orders (22%). The most frequent treatment condition imposed was for substance abuse programs (47%), men's intervention programs (44%) and anger management (22%).

A total of 54 persons were sentenced to custody. The average custodial term was 66 days (median - 41 days).



Comparisons With the 1995 "Nova Scotia Family Violence Tracking Project" Report

This section compares selected results of the current survey with those produced by the "Nova Scotia Family Violence Tracking Project". Due to varying methodology and the types of information collected, it is not possible to produce a detailed set of comparisons. In addition some comparisons should be viewed as estimates as exact matches on the data were not always possible.

Item		1995* Report	1997* Report
A. Police response rates to spousal/partner violence incidents		87%	85%
B. Median police response time to incidents		9 minutes	7 minutes
C. Police arrested suspects at scene		34%	47%
D. Police cleared by charge rate		44%	72%
E. Threat charges as a % of all charges laid by police		13%	15%
F. Threat charges as a % of all persons charged by police		20%	22%
G. Time elapsed from first court appearance to final outcome		5 months	4 months
H. Court case outcomes		57% guilty	65% guilty
I. Threat charge outcomes		35% guilty	45% guilty
J. Frequency of penalties by case:**	Probation	82%	83%
	Custody	28%	19%
	Fine	21%	30%
K. Probation:			
% of probationers with a spouse abuse program referral		35%	44%
% of probationers with a non-association clause		23%	53%
% of probationers with a substance abuse program referral		19%	47%
L. Percent of custody terms with 1 month or less		50%	46%
M. Probabilities (based on number of reported incidents) of:			
Being charged		44%	72%
Being convicted		25%	38%
Being incarcerated		7%	7%

*Based on the date the data was collected.

**Not a complete list of all dispositions.

4.0 EVALUATION OF THE VICTIM SUPPORT SERVICE PROGRAM

4.1 Initial Review (1997)

An independent review of the eight victim support service projects, conducted by Gardner Pinfold Consulting Economists was completed in December 1997. The evaluators interviewed justice workers, project staff and members of project advisory committees and, in addition, conducted focus groups of project clients.

The evaluation concluded that the information and support services provided to victims were an essential component of the successful implementation of the Framework for Action and recommended continued delivery of such services. The evaluators also recommended that early intervention and advocacy services be provided on a pro-active basis to ensure that as many victims as possible gain effective access.

The evaluation report identified duplication of services provided by the projects, RCMP victim assistance workers, Department of Justice Victims' Services and transition house outreach programs. It was recommended that a review of service boundaries be undertaken to avoid duplication and promote effective service delivery. The evaluators identified underutilization of the project services by aboriginal peoples, Afro-Canadians and recent immigrants, and recommended that projects ensure measures are implemented to provide support to minority groups and those living in rural areas.

The evaluators recommended that the program model for the future should provide early intervention and advocacy in an integrated fashion. Service delivery should be proactive and projects should operate in partnership with police to facilitate referrals. The evaluators indicated that delivery could be coordinated either by a transition house or police agency, depending on community preference.

The report recommended that funding for the projects should be linked directly to critical area needs as determined by demand levels and a service gap analysis.

An effective campaign of public education coupled with recurrent education programs aimed specifically at key components of the justice system - police, prosecution and judges - should be implemented in order to maintain the momentum achieved in the first two years of the Framework. Public and targeted education initiatives are seen as critical to the effective functioning of the Framework and the victim support service program.

And, finally, the evaluators recommended that the Departments of Justice and Community Services develop a process aimed at clarifying objectives, reviewing process, identifying lessons learned and developing standards of practice in the delivery of victim services under the program.

4.2 Subsequent Review (1998)

4.2.1 Extension of Project Funding

Subsequent to the completion of the independent evaluation in December 1997, Government provided additional funding of $376,668 for the eight projects until March 31, 1999, with the provision that a review would be completed to determine the continued relevance of the service. It was agreed the projects would be co-managed and co-funded by the Departments of Justice and Community Services.

Project guidelines were developed based on the recommendations contained in the Gardner Pinfold report. Funding to the projects was approved based on proposals submitted in accordance with these guidelines.

4.2.2 Review Methodology

An internal review was undertaken by the Departments of Justice and Community Services based on project activity during the period April 1, 1998-October 31, 1998. In addition to reviewing project proposals, monthly statistics and quarterly reports submitted by the projects, a variety of questionnaires were prepared in consultation with the projects.

A random sample of 209 files was selected from which detailed information was gathered regarding client contact with the projects, contact with the criminal justice system, client needs, service provided and service coordination with other agencies.

A detailed questionnaire was completed by each project, providing information on file management, client population, partnership development and the projects' assessment of lessons learned.

Finally, a total of 87 community agency service questionnaires were distributed (64% response rate). Agencies were questioned about their involvement and satisfaction with the projects, mechanisms to ensure coordination of service and assessment of service duplication.

The review examined the relevance of the service in supporting the pro-arrest, pro-charge, pro-prosecution policy of the Framework for Action. The objective of the projects within the Framework for Action is to provide enhanced services to victims of family violence to support their participation in the justice process. Assistance to victims is intended to address gaps in service at the local level. For the purpose of the review, continued relevance of the projects was defined as proactive response, meeting client need during the early intervention stage of the criminal justice process, coordinated follow-up with other community agencies, and non duplication of service with existing programs.

4.2.3 Review Findings[6]

The review identified the typical client served by the projects as a female between the ages of 20-49 who has experienced emotional and/or physical abuse by a male partner.

The study concludes that although, in general, the projects are providing a proactive response as defined in the Gardner Pinfold report there are some notable deviations where lengthy response times were reported. The definition of proactive requires projects to rely on referrals from police, which reportedly occurs automatically in five of the eight projects. Having project coordinators search police files for referrals, while providing the advantage of identifying clients who might not have been served otherwise, may risk being counterproductive if it relieves police agencies of the responsibility of actively reporting incidents of spousal/intimate partner violence.

It is evident from the study that the overall service is primarily a telephone service related to client needs for information, emotional support, safety planning, and case advocacy. In general, projects reported follow-up services being provided more frequently than early intervention, with services being coordinated with other agencies in just over half of the cases. There is little indication from the data received of immediate response/crisis intervention having been provided for cases under the mandate of the Framework for Action.

Projects were found to provide services in cases both within and outside of the Framework for Action mandate. Nearly one quarter of the cases fell outside of the funding mandate. In only 64% of the sample were the cases reported to involve intimate partners or any family relationship. The form of abuse was reported in only 69 of the 209 cases (33%) and of those only 48 cases were reported to involve criminal behaviour.

The average cost of the service per case is $235.83. The projects spend 4.2 hours on average per case, with 3.1 of these hours being devoted to client contact. Projects reported that on average 53% of time is spent on service delivery, 36% on administration, and 11% on travel. It would therefore appear that a significant portion of the funding is being diverted from client services to support the management and administration of the project structure.

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[6] The full text of the Victim Support Service Project Review is presented in Appendix 'E'.

While the Advisory Committee structure appears to work well in five of the eight projects, several issues were raised by the review. Referral protocols with police and other justice agencies remain outstanding in two projects. Others, requesting additional funding, stressed the strain on human and/or fiscal resources to provide both proper management and deliver a proactive service to the community. The suggestion was made that a better balance between administration and client service could be achieved if the projects were attached to an existing service. Two requests were made for an examination of the volunteer model to determine if it is the most appropriate model or if it is being used to its best advantage. Some Advisory Committee members in two projects communicated their preference for a change to a management board function, expressing dissatisfaction that the current level of responsibility is not matched by a corresponding decision-making ability.

The study has determined there is a lack of clarity regarding how the work is defined as distinct from services provided by Transition House Outreach programs, RCMP Victim Assistance programs, and Department of Justice Victims' Services. The data reveals that the projects provide a similar service to the core services delicvered by these agencies, rather than addressing gaps in service. A number of community agencies indicated services of the projects are a duplication of services already existing, noting in some cases, that the work is a natural extension of the work of Transition House Outreach services. Even when not considered a duplication, confusion for clients is apparent when services operate in a parallel fashion.

Ideas and suggestions to improve the service were offered by community agencies in categories related to volunteer role, justice protocols, education, funding requests, and service improvement. A variety of suggestions were received in relation to justice protocols, some calling for more referrals from police, others a continued development of referral protocols, or automatic referrals. More public education appeared prominently as a suggestion, along with joint training for police, child abuse investigators and other community service providers. Suggestions for service improvement included a call for a standardization of service throughout the province, a de-emphasis on the criminal justice system in favour of service related to Family Court issues, more consistent service coordination, and a closer liaison with Transition House service to alleviate administrative duties and to allow more resources to support actual service delivery.

Although data was extracted from individual projects, the study examined the service model as a whole. It is clear that in some cases projects were successful in providing a service in support of the funding mandate, with existing services enhanced through strengthened community partnerships, and effective referral protocols developed with policing agencies. Some projects made significant efforts in identifying service gaps within the community and clients who might not otherwise have received service through existing agencies. The future direction of the service will necessarily build upon these successes.

The study concludes, however, that when relevance is defined for the overall service as proactive response; meeting client need during the early intervention stage of the criminal justice process; coordinated follow up; and non-duplication of service; the relevance of the service, as it is currently structured, is in question. Though response is generally proactive, there is sometimes extended periods between referral and client contact, the service is most often provided as a follow-up rather than an early intervention service, and not all cases indicate police involvement, or reportedly involve intimate partners or any family relationship. Finally, as the services provided are primarily services now offered by existing agencies, duplication in service is evident.

5.0 REVIEW OF POLICIES AND PROCEDURES

Eighteen months following the implementation of the Framework for Action, consultation sessions were held with managers and front-line workers from all components of the justice system. The purpose of the consultations was to elicit views regarding the effectiveness and workability of the Framework for Action and its related policies and operational procedures. A series of fourteen focus groups, involving a total of 150 participants, were held throughout the Province in May and June 1997. The discussion guide used in the consultation sessions is provided in Appendix 'F'. Participants included representatives from the RCMP, municipal police departments, Victims' Services, correctional institution staff, probation officers, court administrators, Crown Attorneys and victim support service project staff.[7]

5.1 Police

5.1.1 Contacting the Police

Police in certain areas of the Province indicated that members of some minority groups are reluctant to report incidents to the police. The need for enhanced outreach services to these communities was expressed as well as better access to interpreters for police.

5.1.2 Initial Response

Police representatives indicated that spousal/partner violence calls are given a high priority by police. This was confirmed by participants from other sectors of the justice system, many of whom indicated that police response had improved significantly since the training initiative. A number of Victims' Services representatives stated that an improved police response had been reported to them by victims.

In most instances, police reported receiving excellent information from dispatch (e.g. urgency of call, presence of firearms, premise history). The RCMP in some cases reported problems with the handling of 911 calls through central dispatch and indicated the dispatch system was under review.

In some rural areas of the Province, police indicated victims were reluctant to provide information over the phone due to the widespread use of scanners.

Police indicated that participation by dispatch officers in the family violence training had had a beneficial effect in that these officers were appropriately sensitized to the type of information required by police in responding to calls reporting spousal/partner violence.

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[7] Although the 150 participants represent a broad cross-section of criminal justice workers in the Province, it must be stressed that this Chapter reflects their views and perceptions. No conclusions can be drawn regarding the actual prevalence of practices and attitudes reported.

A number of police participants recommended that peace bond information be added to CPIC so that they could respond appropriately to violations of these court orders.

5.1.3 Investigation

Police indicated that photographs and video statements were usually gathered in the most serious cases, but not with low-end offences.

Crown attorneys, in a number of areas, expressed concern that photographs were not being taken consistently and that frequently they were not of sufficient quality to be used in court. They also noted that photographs were not always ready when needed by the Crown for bail hearings. Some police noted that they received training in the use of Polaroid cameras and that this had proven very useful. A number of areas pointed to the need for a female identification officer to take evidentiary photographs of victims.

Many Crown attorneys indicated that video statements at the scene would greatly enhance evidence for court. A number of officers indicated that the use of video equipment at the police station is problematic as many victims/witnesses are reluctant to leave their home and children to attend at the station. In some areas, police indicated that they had not received training in videotaping statements and were not comfortable with this technology. The practice of taking videotape statements varies widely across the Province as does the availability of the necessary equipment.

A number of police managers expressed concerns regarding the administrative costs associated with meeting evidentiary requirements for the successful prosecution of spousal/partner violence cases.

The Framework training stressed the need to gather 911 tapes for evidentiary purposes. In some areas of the Province it was noted that provincial legislation requires that search warrants be obtained to access 911 tapes. The *Emergency 911 Act* (1994, Chapter 38) contains confidentiality clauses that limit the release of 911 information except for the purposes of design, development, implementation, operation or maintenance of the system.

The majority of police representatives felt that the use of photographs and videotaped statements had made a difference in court, particularly in generating a significant number of guilty pleas. Most Crowns agreed, making particular reference to their usefulness in cases of reluctant or recanting victims/witnesses. A number of participants expressed frustration that the evidence, collected as per the Framework policy, may not make a difference if the judge is not supportive of the Framework.

A number of police interpreted the Framework policy as curtailing police discretion[8] and noted that in some cases charges are being laid even though reasonable and probable grounds do not exist. Police representatives did indicate that many victims have expressed a positive reaction to the requirement that police, not victims, are responsible for laying charges.

5.1.4 Arrest

A number of police representatives indicated there were problems with respect to alleged peace bond violations in cases where they cannot confirm the existence of the peace bond. It was recommended that this information be entered on CPIC.

One problem identified was the determination of the appropriate response for police when two conflicting orders exist; i.e., a Family Court order allowing a parent access to children and a peace bond order containing conditions that the individual not have contact with his/her family. Family Court orders appear to present a real problem for police officers, as they were generally not aware of the existence of these orders.

Police in some areas stated that they were uncertain whether both parties should be arrested when they both appear to be involved in an assault. Victims' Services staff voiced a concern about the apparent increase in cross-charging.

The Framework policy requires that police, when releasing a spousal/partner violence suspect on an undertaking (Form 11.1), must always include a 'no contact' condition in the undertaking. Compliance with this policy varies across the Province. Some police were of the view that the 'no contact' provision of the Form 11.1 release is not mandatory and practice is to include this only if the victim so desires. Some Crowns indicated there is a problem with the provision of Form 11.1 information to the Crown. For example, if an undertaking is issued on a weekend, the Crown will not necessarily have the information to deal with the applications to vary conditions of the undertaking presented to the court on Monday mornings. In other areas of the Province, suspects are taken before a justice of the peace for release and police undertakings are not used. Police in these areas are of the view that the suspect may take the matter more seriously if it is heard by a justice of the peace.

Many participants expressed great frustration that 'no contact' conditions are frequently dropped during subsequent court appearances. It was felt that court time is frequently wasted, when such a high proportion of victims urged that 'no contact' provisions be lifted when the suspect appears in court.

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[8] The policy which requires that charges be laid where reasonable and probable grounds exist does not, in fact, curtail police discretion.

5.1.5 Laying of Charges

Participants were virtually unanimous in their view that the policy with respect to laying of charges (where reasonable grounds exist) is clear. In some areas participants indicated they felt some police were still instructing women to apply for peace bonds instead of laying charges. In one case, a Crown attorney expressed concern that officers were laying charges when grounds did not exist "leaving it to the Crown to sort out".

The majority of participants expressed concern regarding the criminal harassment (stalking) provisions of the *Criminal Code*. Crowns and police indicated that evidentiary requirements are difficult and that there is considerable confusion regarding the laying of these charges. A number of Victims' Services representatives indicated that victims may not tell police the complete history of harassment and as a result police, not understanding the repetitive nature of the incidents, may advise victims to get a peace bond. Some police indicate they have been advising victims to keep a diary of activities in order to assist in laying of charges (i.e. to establish and prove a pattern of harassment). Some Crowns noted that criminal harassment charges are frequently accompanied by charges involving physical violence. It is not uncommon for the harassment charges to be dropped, as evidence of the physical violence is easier to prove in court. It was frequently recommended that police be provided with training to assist in the laying of criminal harassment charges.

Participants were asked to define in what circumstances police advise the victim to get a peace bond. Most participants agreed that peace bonds should only be recommended where evidence does not exist to support a charge or where the matter does not fall within the mandate of the policy. In a few areas of the Province, however, court administrators indicated that they receive a large number of peace bond applications in cases where charges should have been laid.

Police routinely inform the accused and the complainant that charges can only be withdrawn by the Crown. Police note that in some instances both the accused and/or the complainant become quite agitated with the police and Crown as a result. In other situations, the victim may be favourable at first and later unhappy that charges have been laid. Both the Crown and Victims' Services representatives indicated that they are frequently contacted by complainants who wish the charges to be dropped. On the other hand, a number of participants indicated that victims are relieved when they learn it is not their responsibility to lay charges.

5.1.6 Victim Referral and Safety

All police appear to be aware of the requirement to refer the victim to a victim support service, although practice varies significantly across the Province. Some police provide victims with an information card at the scene of the incident, and refer the case to the victim assistance worker who follows up by telephone the next day. In some areas of the Province, crisis intervention workers are available to attend at the scene to provide immediate assistance. Participants generally spoke favourably about the victim support service program.

Transportation of the victim to a safe location is generally not a problem in urban areas and can be done by either police or volunteers (in most areas). In the more rural areas of the Province, some problems have been encountered, particularly where services for victims are limited. Difficulties are particularly severe where the victim requires transportation to a transition house and none exists in the immediate area.

5.1.7 Interim Release

A number of Crowns indicated that the wishes of the complainant were not always listed on the Crown sheet and, as a result, in cases where the victim does not wish a 'no contact' condition, application to vary conditions are very frequent. Again, frustration was voiced by a number of participants that the Court may release an accused despite the recommendations of the police or Crown. Some police voiced frustration that an accused may be arrested, released on bail and rearrested a number of times.

All participants acknowledged the importance of informing the victim about release conditions. Although police in most areas indicate that they inform the victim, this can also be done by Victims' Services (if the referral is made) or, less frequently, by the Crown. In some cases, copies of the order are mailed to the victim by the court officials, but this has proven difficult when addresses are not complete. In some areas of the Province, victims are advised to pick up a copy of the order at the police station or court. In some areas, Victims' Services staff voiced concern that they were not informed about an accused's interim release.

Some problems have been experienced with the release of alleged perpetrators on bail. Some participants expressed frustration that an accused and the victim begin cohabiting again, despite the violence. Other participants expressed frustration that so few alleged perpetrators were held in custody.

5.1.8 General

When asked to identify any general problems which had been experienced in implementing the new police policy and procedures, a frequent area of frustration related to the attitude of the judiciary. As expressed by a number of police officers, police and other justice workers are required to follow the policy, but their efforts can be all for naught if the judge does not take a serious view of family violence incidents.

5.2 Crown

5.2.1 Arraignment

In general, Crowns expressed satisfaction with the information received from police in order to make representation regarding bail decisions. It was indicated that it is important to receive information regarding a history of family violence, if applicable. Some Crowns indicated that there should be confirmation that the victim wants a 'no contact' condition, because if the judge hears that the victim did not ask for a 'no contact' order, this will normally be a deciding factor in variation of conditions.

Practice varies with respect to how a victim is informed regarding conditions of release on bail. In some cases police inform the victim and in other cases the Crown indicated that the victim is informed by letter. A number of corrections officials indicated that probation officers are not generally informed regarding conditions.

The Framework policy indicates that violations of court orders are to be prosecuted without delay in order to ensure the safety of victims. In a number of areas, Crowns indicated that heavy dockets were a major barrier and that delays of many months are experienced. In a number of areas inadequate legal aid resources were cited as a major problem.

Significant differences in delays were reported, with some areas reporting virtually no delay while others were booking 9 to 12 months away. In some areas, Crowns indicated that family violence cases were slotted in on a priority basis.

5.2.2 Trial

In cases where the prosecution is discontinued, most Crowns indicated that they consult with the investigating police officer. Victims are generally consulted, but this may occur through the police officer. Few Crowns indicated that they consult with the Regional Crown, although some indicate they do so in serious cases.

In general, the Crown indicated they make every effort to interview victims before the trial. In some cases, due to heavy workloads, this may not be possible until the day of the trial. In some cases, the victim may be upset that the matter is going forward and may not wish to speak to the Crown. Some problems were noted with the use of per diem Crowns, as they are not paid for preparation time and, as a result, some do not meet with victims prior to trial. In a number of areas, Victims' Services staff play a key role in scheduling appointments with the Crown for the victim.

The Framework policy requires that Crowns make referral to Victims' Services. The practice appears uneven, with some Crowns scrupulously referring in each case, while others make very few referrals. In a number of offices, this responsibility has been delegated to the Crown secretary who will either fax the information to Victims' Services or send it via mail.

The majority of Crowns indicated that in cases of a recanting victim, there is virtual certainty that the accused will be acquitted. It was noted that the criteria for admission of a KGB[9] statement is still very onerous and victims frequently say that the version of events in the original statement is not correct. It was noted that there is a need for further training so that police will understand the importance of the KGB statement.

In cases where victims do not appear as witnesses when subpoenaed, a majority of Crowns indicated that they will request that a warrant be issued. They indicated it is very important for the victim to understand that they have an obligation to appear before the Court. Some Crowns indicated that they did not like to issue warrants to compel victims to appear, but felt this was necessary to satisfy the Court that the victim had not been pressured by the perpetrator.

5.2.3 Sentencing

The use of victim impact statements varies widely across the Province. Some Crowns indicated that the reports were completed frequently and that they serve as a ideal vehicle for victim input to sentencing. Many Crowns indicated, however, that victim impact statements were rarely completed in cases of spousal/partner abuse. With disclosure requirements, victims are concerned that the perpetrator will become even angrier due to the content of the victim impact statement and fear reprisal.

With respect to responsibility for informing the victim of the sentence imposed, here again the practice varies widely. In some instances the Crown notifies the victim directly either by telephone or by letter. In other cases the Crown requests that the investigating officer inform the victim. Still in other cases, the Victims' Services officer notifies the victim. In some areas of the Province, the probation officer will contact the victim and explain the conditions of the probation order. In other areas probation officers complained that they do not have the address or phone number of the victim and so are unable to contact them.

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[9] Supreme Court of Canada decision in R v. K. G. B. (1993), 79 C.C.C. (3d) 257. The use of this decision in appropriate cases permits the Crown Attorney to use the complainant/victim original statement to police as evidence in court.

5.2.4 Appeal

With respect to practice for advising victims regarding notice of appeal, date of appeal hearing and outcome of appeal, the majority of Crowns stated that they had had limited experience with appeals. Most indicated that appeals are conducted by the Appeals Division of the Public Prosecution Service and any victim notification would be coordinated through that office.

5.2.5 General

A number of Crowns expressed their frustration with the number of times they are required to appear in court to have undertakings varied - generally to remove a 'no contact' condition. Another common theme was concern about the "static" implementation of the policy, in that there did not appear to be room for any variation in respect to individual circumstances. Again, concern was expressed by many participants regarding the disparity in sentences in similar cases.

5.3 Provincial/Family Courts

5.3.1 Peace Bond Applications

This topic generated significant discussion. Court administrators indicated that although the peace bond forms are more easily understood now, many complainants require assistance in completing the application. Because the Court justices of the peace are not permitted to assist with the completion of the application (as they are required to hear the matter) there is difficulty in providing this service to complainants. In a few areas of the Province, community agencies (such as transition house staff) have offered assistance. Where Victims' Services offices are located within the courthouse, their staff can also provide assistance.

In a number of areas, court staff indicated they have encountered a heavy volume of peace bond applications. Court staff in these areas are of the opinion that grounds frequently may exist for the laying of a charge. Some Court staff felt that complainants may not be providing police with comprehensive information, as they do not want charges laid, preferring to apply for a peace bond instead. Some court administrators were concerned about the number of frivolous peace bond applications and stated that the grounds for obtaining a peace bond (fear for safety) are not well understood.

Practice in screening peace bond applications varies widely. In some instances justices of the peace screen applications, rejecting those where grounds do not exist. In other areas of the Province, JP's have been instructed to take all applications without screening them, leaving that decision to the judge. A number of court staff indicated that the increase in peace bonds has generated considerable work for them as they are required to summons witnesses.

The majority of court staff indicated that victims were informed of the community resources available either through the Court office or through referral to Victims' Services.

The Framework specifies that summonses in relation to spousal/partner violence cases should be flagged for police to ensure speedy service. In many areas it was noted that cooperation between the police and the court is excellent and the process works very well. A number of court officials indicated that they have encountered difficulties getting sufficient information from the complainant regarding mailing addresses and phone numbers. In some areas a significant problem was identified in unserved summonses not being returned to Court, and as a result, warrants not being issued.

5.3.2 Hearing

For the most part, Court staff indicated it was possible to set the first hearing within five to seven days. They did indicate, however, that if there was a need for a second hearing then the wait could be a few months. In rural areas, where the court sits infrequently, it is not possible to meet the five to seven day target.

5.3.3 General

Many court staff indicated that the Framework training had changed attitudes and that the cooperation between all components of the system had improved significantly. It was recommended that all justices of the peace receive training. In some areas of the Province, there are long delays in scheduling cases and court administrators expressed frustration regarding this.

5.4 Correctional Services

5.4.1 Pre-Sentence Report

Probation officers have differing views regarding their role in discussing safety plans with victims. In some areas of the Province, safety plans are discussed with victims when they are interviewed during pre-sentence report (PSR) preparation. Other probation officers indicated that development of safety plans is not included within current probation policy and that this is the role of Victims' Services. A number of officers indicated that safety plans were generally completed prior to the PSR preparation.

When questioned about the domestic violence inventory assessment, most probation officers indicated it was a very useful tool.[10]

5.4.2 Community Supervision

In most cases, the probation order is read to the offender by court staff who require him/her to sign the order. This process is generally repeated by probation staff. In some areas of the Province, the accused leaves the court before the documentation has been completed. The lack of signature on a probation order has created some difficulties, particularly with respect to alleged breaches of probation conditions. In some areas of the Province, Crown sheets are provided to probation officers, but in most areas of the Province this information is not provided. Some police officials expressed concern regarding the distribution of the Crown sheet beyond the police and Crown due to the nature of the information contained in this document.

Serious concern was expressed regarding the lack of men's treatment programs. Programs do not exist in some areas of the Province and, where they do exist, waiting lists of up to a year are not uncommon. Many probation orders contain a requirement for offenders to seek treatment and lack of access was described as a major gap in the Framework initiative.

Funding for men's treatment programs is provided by the Department of Community Services[11]. A concern was voiced regarding the lack of standards for these programs and the variation of programming across the Province.[12] It was noted that some programs charge a fee for participation while others do not. In fact, one privately-operated program charges $500 for court-ordered clients and $250 for non-court ordered (voluntary participation).

Probation officers are not always aware if an offender has breached the conditions of a probation order. Practice for informing police, Crown and Victims' Services varies widely. In most cases, the police and Crown are informed, but contact with Victims' Services is infrequent. It was suggested that the development of a protocol between Correctional Services and Victims' Services would be desirable in order to enhance the safety of victims.

Probation staff were of the view that current procedures were probably not adequate to monitor the offender's behaviour in the community. Community corrections staff are carrying very high caseloads and close monitoring of offenders is not possible. A number of staff recommended the implementation of an electronic monitoring program.

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[10] The DVI is a self-report instrument used to assess risk and identify problems areas.

[11] The Department of Community Services provides funding to six programs. A number of other men's intervention programs operate without Community Services funding.

[12] Draft program standards have been developed by the six men's intervention programs in consultation with the Department of Community Services.

Probation officers in smaller communities were generally satisfied with monitoring of the offender in the community as this is done by police.

5.4.3 Custody

Correctional institution staff are very rarely made aware that an offender has committed a spousal/partner violence offence. It was recommended that such cases be flagged. It was further suggested that the institution be made aware of the existence of any 'no contact' orders. An urgent need was expressed regarding information from police when an offender is admitted to lock-up. It was recommended that a form be presented by police (in the case of lockups) and by the Court (for remands) to indicate there are restrictions in the contact the offender may have with the victim. A specific concern was voiced regarding whether or not a 'no contact' condition in a probation order to follow incarceration should also apply during the period of incarceration.

Participants were asked whether current procedures are adequate to monitor the offender's behaviour within the institution to prevent him from contacting the victim. Some correctional institution staff indicated that the institutions have the necessary means to monitor the offender's behaviour through visitation, mail and phone monitoring, but only if they have the relevant information from the Courts. A number of institutions indicated that control of offender/victim contact by telephone is difficult, if not impossible.

The small institutions indicated that no programs were available for perpetrators while they are serving a jail term. The Halifax and Kings institutions indicated that there are a number of in-house anger management and related programs. In addition, offenders may be escorted on temporary absence to attend relevant programs in the community.

5.4.4 Temporary Absence Program

Procedures for contacting victims during the temporary absence investigation process varies significantly across the Province. Some institutional staff indicated that family violence offenders were never considered for temporary absence. Other institutions noted that they were infrequently aware that an offender had committed a spousal/partner violence offence. Some institutions have developed a protocol with Victims' Services in order to obtain victim input during the TA investigation. A number of participants identified considerable difficulty in contacting victims as they did not have correct phone numbers/addresses.

The majority of institutions indicated that they notify police of a temporary absence decision, although in some cases (notably Halifax) the notification may be one week after the fact. Notification of probation officers and victims occurs less frequently.

Again, practice varies with respect to notification of a parole release. Victims' Services indicated that a victim can make application to the Parole Board in order to receive information about upcoming releases. In the larger metropolitan areas, it was noted that police may be contacted by telephone/fax in the case of the release of a high profile offender. In general, it was felt that steps should be taken to include parole in the Framework protocol.

5.4.5 General

A number of probation staff expressed serious concerns about the use of conditional sentences for spousal/partner violence offenders. Inability to monitor closely and ineffective response to breaches of conditional sentences were identified as particular problems.

Most officers expressed the need to flag family violence cases in order that corrections personnel can apply the Framework policies.

5.5 Victims' Services (Department of Justice)

5.5.1 Referral

Victims' Services officers indicated that they have seen a dramatic increase in their caseload due to family violence matters. In many areas, the increase in referrals has been particularly notable from the Crown attorney's office. Interestingly, in some areas it was noted that the Crowns are not referring as per the policy. Once again, the need for a family violence flag was identified.

The policy requires Victims' Services to contact the victim within two days. A number of officers indicated that it was not possible to meet the standard, given the high caseload. A further problem identified is the mobility of the victim group and the desire on the part of some to avoid contact with the justice system. The need to receive accurate address and phone number information from the referral sources was stressed. The problem of contacting victims with no phone was noted, particularly in some rural areas.

5.5.2 Services

Victims' Services indicated there is a high incidence of victims who do not want any service beyond introductory information. Many victims just receive introductory information and there is no further contact. One officer identified that there has been a significant increase in the number of clients who desire assistance to get the charges dropped or to get a 'no contact' order lifted. Most officers indicated that the relationship with transition houses and community agencies was excellent. The majority of participants felt that victims do not have sufficient access to legal advice. A number of victims have concurrent issues with the criminal and Family Court. A number of participants indicated that assistance with the Family Court process was not being sufficiently addressed. An overwhelming concern was the lack of mental health programs in virtually all areas of the Province.

Some concerns were expressed regarding the lack of contact between victim and the Crown. In many areas, Victims' Services acts as a liaison to set up meetings with the Crown prior to trial. It was recommended that where it does not already exist, a protocol be developed between Victims' Services and the Crown to facilitate contact between the victim and the Crown.

5.5.3 General

Many participants identified custody/access as a major issue of concern. Information regarding Family Court access orders are not always available in the criminal proceedings, and as a result conflicting orders are not unusual. A number of participants, particularly in the Court administration area, were not knowledgeable regarding the services provided by Victims' Services and it was agreed that such information should be provided. It was noted by a number of participants that communication between all partners within the criminal justice system had greatly improved as a result of the Framework Initiative. Recantation was identified as an ongoing problem; the greater the timeframe between incident and trial, the more likely the victim will change her mind about testifying. Some Victims' Services officers indicated that it is very difficult to find volunteers who will offer court accompaniment and that this is an important service for victims. A general comment made by a number of groups was concern regarding the lack of Victims' Services staff, particularly in relation to the greatly increased caseloads because of Framework referrals. In some areas, concern was expressed regarding the reluctance of aboriginal victims to become involved in the justice system. In some areas, there was confusion regarding the specific services offered by the respective victim programs (i.e., Victims' Services - Department of Justice, RCMP victim assistance workers, transition house outreach workers, victim support service workers).

6.0 CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

The Framework for Action has had a significant impact on the response of the justice system to incidents of family violence. The data collected reveals that the pro-arrest, pro-charge, pro-prosecution policy has resulted in a higher charge rate and a higher conviction rate. Victims have frequently reported greater satisfaction with the process and criminal justice professionals have generally noted increased sensitivity and improved response among their own colleagues and in other components of the justice system.

6.2 Critical Success Factors

6.2.1 Training and Protocol Development

The ambitious training program (3000 justice workers trained over an 18-month period) was held by many to be the most important critical success factor. In utilizing a train-the-trainer model, all components of the justice system have a stake in the success of the initiative. The training was comprised of a sensitization component in which the dynamics of spousal/partner violence was discussed. Equally important was the focus on policy and procedure for each sector of the justice system, the interconnectedness of the policies and the important relationship with community agencies. Many respondents recommended that the training model used in the Framework for Action initiative be used when other major criminal justice policies are introduced.

6.2.2 Victim Support

Support for victims is critical. The emotional and physical impact of spousal/partner violence is profound and victims have reported feeling doubly victimized through their involvement in what many perceive to be a hostile and confusing criminal justice process.

Despite the development of protocols to lessen the reliance on victim testimony, the criminal justice system still needs the cooperation and participation of victims to successfully prosecute spousal/partner violence. The early intervention and advocacy services provided through the victim support service program were assessed as an essential component of the successful implementation of the Framework for Action.

6.2.3 Interagency Collaboration

The Framework for Action Against Family Violence was provided strong support by community organizations throughout the Province. Under the leadership of the Family Violence Prevention Initiative, interagency committees on family violence participated in the training of criminal justice workers and in managing the victim support service projects.

6.2.4 Public Awareness

There is no doubt that there has been an increased awareness that family violence is a crime and a serious social problem. The publicity surrounding the implementation of the Framework For Action and the ongoing efforts of the FVPI has served to heighten public awareness. It is likely that this has been a factor in influencing family members or support persons of victims to encourage them to report incidents of family violence to police.

The lessons learned during the first phase of the Framework should be considered as building blocks to lay a foundation for the continued improvements which are essential to address the deficiencies which still exist in the response of the justice system to family violence. The final section of this report will identify those areas which require remediation and issues which require further study.

6.3 Recommendations

6.3.1 Recommendations Resulting from the Consultation on Policies and Procedures

A number of obstacles to the effective implementation of the Framework for Action policies were identified during consultation with justice workers throughout the Province, including the need to:

- Enhance outreach services to those living in Aboriginal communities and to visible minorities to support victims and to increase reporting of spousal/partner violence.
- Improve access to interpreters to facilitate communication between police and citizens who do not speak English.
- Ensure the effectiveness of the 911 system in facilitating police dispatch for calls reporting spousal/partner violence.
- Enter peace bond information on the CPIC system to ensure that police are aware of these orders when they respond to spousal/partner violence calls.
- Review the practice of taking photographs and videotaped statements to promote consistency across the Province.

- Develop a practical and effective process for facilitating police access to information regarding orders of the Family Court or Supreme Court (regarding family matters).

- Review the *Emergency 911 Act* to determine if it should be amended to permit 911 recordings to be released for purposes of criminal prosecution.

- Ensure that procedures are in place in all areas to ensure that victims are informed regarding interim release and sentencing outcomes.

- Ensure that Crowns are aware of and follow the policy requiring them to refer victims to Victims' Services.

- Ensure that spousal/partner violence cases are flagged and that relevant information is shared to trigger the application of the Framework for Action procedures at all stages of the justice system from arrest through court disposition.

- Explore, through the provincial Access to Justice initiative, the feasibility of electronic exchange of information.

Many concerns were expressed regarding the use of the peace bonds: that they are sometimes used inappropriately in cases where charges should be laid; the lack of a flag to earmark whether peace bond applications involve violence in a spousal/partner relationship; the length of time taken to consider peace bond matters in court (past first appearance when the matter is contested); supports needed in Provincial Court for unrepresented complainants. At the urging of the Chief Judge of the Provincial Court, night court adjudicators were asked to hear peace bond applications in order to minimize delay. The first session was held in December 1997, but statistical reports reveal that very few applications have been heard in this venue. It is recommended that the Department of Justice conduct a review of the use of peace bonds in spousal/partner violence cases to address the concerns which have been voiced by victims, community agencies and justice workers.

Justice workers and community agency representatives throughout the Province voiced concern about the lack of men's intervention programs. Access to programs is inconsistent; waiting lists of up to a year are not uncommon; and provincial program standards have not been set. The Department of Community Services funds six treatment programs, but other unfunded programs offer varying levels of service. A committee composed of representatives from the Departments of Community Services, Health and Justice has reviewed service issues and funding models. It is recommended that these departments develop and implement a service delivery model to improve access to approved programs.

As the new Family Division of the Supreme Court is established and the Department of

Justice implements alternative dispute resolution and mediation programs for those involved in family disputes, it is essential that great care be exercised in screening participants for involvement in such programs. A history of family violence is a reflection of a power imbalance in the spousal relationship which can mean that the minimum conditions for involvement in ADR and mediation cannot be met.

6.3.2 Continued Training

Although some sectors of the justice system have attempted to provide training for new staff, these efforts have been uneven. There has been no comprehensive approach to ensure that new employees receive the necessary training or that those already trained receive refresher training.

There is reason to believe that the lack of training is a contributing factor to the recent declining charge rates for spousal/partner incidents. Representatives from the Transition House Association of Nova Scotia have approached the Department of Justice to express their concerns regarding the 'backsliding' of some justice workers and have indicated a willingness to participate in any training initiative.

The cost of training is significant. Police agencies have estimated the total cost of their participation in the Framework training at approximately $100,000 (primarily for backfilling). Municipal units, which are responsible for policing costs, have indicated that they would expect the Province to pay for provincially mandated training.

Some key justice workers (justices of the peace and per diem Crown attorneys, in particular)did not receive training during the initial phase of the Framework for Action. In view of the role played by these individuals, it is important that they are aware of their responsibilities and accountability.

It is recommended that representatives from all components of the justice system, together with interested community agencies, develop a strategy for delivering an ongoing training program in order to ensure that all justice employees are familiar with the Framework policies and procedures.

During the consultations with justice workers, many expressed frustration with the sentencing practices of the judiciary. They were concerned that the commitment to the Framework policies and procedures was being undermined in areas where the judiciary did not appear to take a serious view of family violence.

It is recognized that, in keeping with the principle of judicial independence, the Court is responsible for developing the training agenda for the judiciary. It is further recognized that through the National Judicial Institute, education and information sessions have been provided to the Nova Scotia judiciary on issues such as the cycle of violence and gender equality.

However, in light of the very serious concerns raised by justice workers and community agency representatives, it is recommended that the Minister of Justice bring this report to the attention of the Chief Justice of the Province and the Chief Judges of the Provincial and Family Courts.

6.3.3 Victim Support

Enhanced victim support has proved to be an essential element of the Framework for Action. In their 1997 review of the victim support service program, Gardner Pinfold concluded that the objectives of the program - providing victims with the support and information needed to deal with the consequences of the pro-arrest policy - are highly relevant and that the information and support services, which facilitate a coordinated response from the justice system, should continue. The review described the support of the police, community agencies and program clients for the program:

- *"Police indicate the positive impact arises in three ways. They are more knowledgeable about the issue through close working relationships with project staff. They have developed a greater appreciation for the services provided by such organizations as transition houses, leading them to be more inclined to rely on Program services. They are able to approach their jobs - dealing with the criminal aspect of cases - with more confidence knowing that the victim support element of the Framework is being systematically addressed. This they believe is contributing to a higher proportion of women participating fully in the court process.*

- *Community service providers state that victims are now more aware of their options and there is improved coordination amongst agencies in delivering needed services.*

- *Program clients provide the most compelling reason, one which goes to the heart of the Framework - many say they could not have gone through the process without the Program support, and would in all likelihood still be with their abusive partners."*

The 1998 review of the projects also reflected positively on the value of a program of support for victims. Following the first two years of operation, however, a number of critical success factors were identified: proactive response; meeting client need during the early intervention stage of the criminal justice process; co-ordinated follow-up with other agencies; and non-duplication of service with existing programs. While some elements of the victim support service program are consistent with these critical success factors, the review has identified some inconsistencies related to response time, nature of service provided and interaction with the justice system and other community agencies.

It is recommended that the Departments of Justice and Community Services, based on the results of the review, identify a service model which reflects the critical success factors. The model should build on the experience gained and the contributions made by the eight projects, their staff and volunteers since April 1996. Efforts should be made to ensure victim access to service province-wide; promote linkages between the program and the criminal justice system; and optimize the use of resources for service delivery as opposed to administration.

6.3.4 Monitoring

Monitoring of the justice system response to spousal/partner violence was seen as a critical component of the accountability framework for the initiative. Each component of the criminal justice system was charged with developing a monitoring mechanism to ensure that the response to spousal/partner abuse cases conforms to the established policy and procedure.

This responsibility has been accepted by police agencies. An RCMP reader reviews files and determines whether the policies have been followed. Similarly, the Police and Public Safety Services Division of the Department of Justice conducts regular audits of municipal police agencies and reports to the Chief in cases where the policy has not been followed. The Victims' Service Division of the Department of Justice monitors the response to victims of spousal/partner violence through a file review twice a year.

Unfortunately, an ongoing monitoring process has not been fully implemented by the Public Prosecution Service, Courts and Registries or Correctional Services.

Consultations with criminal justice workers revealed considerable variability across the Province with respect to the interpretation and implementation of the Framework policies. Senior management of criminal justice agencies convey to their staff the importance of policy when staff performance is assessed by the degree to which they adhere to policy. Deficiencies in the response of any one component of the justice system jeopardizes the effectiveness of the system as a whole. It is therefore recommended that the Minister of Justice require each component of the criminal justice system to formally restate their commitment to the Framework for Action Against Family Violence and articulate the means by which they will monitor adherence to the Framework policies.

6.3.5 Interagency Collaboration

The justice system has an important role to play in the response to family violence.

Ultimately, however, a truly effective strategy to address this serious social problem must mobilize the coordinated efforts of many disciplines, involving government agencies and community. Important steps have been taken by justice workers through the Framework for Action and this report contains recommendations for redoubling efforts to improve the response of the justice system. Similar initiatives have been taken by other departments of government, but gaps in service and inadequate coordination of services have been identified.

To a great extent, the criminal justice system is a reactive system which is called upon to respond after an incident occurs. The prevention of family violence requires a focus on building awareness and changing attitudes. The education system has initiated a number of promising programs to address the issue of interpersonal violence and to assist children and youth to develop skills for the non-violent response to conflict. The League of Peaceful Schools, which many Nova Scotia schools have joined, is a powerful example of the commitment of many school administrators, teachers, students and parents to the concept of violence-free schools.

The Family Violence Prevention Initiative was established as a community/government partnership to provide a focal point for promoting collaboration in efforts to prevent and respond to family violence. It is essential that all participating government departments and community agencies commit to the overall mission of the FVPI and are accountable for the achievement of agency-specific objectives related to the mission. Government has an important leadership role to play and it is recommended that the Deputies' Committee on Social Policy reconfirm the mandate of the FVPI and establish the necessary accountability framework.

6.4 Impact of the Framework for Action on Reporting of Spousal/Partner Violence

The number of incidents reported to the police remained fairly constant over the reporting period April 1996 to August 1998. Due to the complex interplay of factors responsible for the decision of victims of spousal/partner violence to either report or not report such incidents, it is not possible to draw conclusions regarding the actual incidents of spousal/partner violence from police data.

The 1993 Violence Against Women survey conducted by Statistics Canada indicated that 29% of ever married women (including common-law relationships) reported being subjected to spousal/partner violence at some point in their relationship. Moreover, of those incidents not reported: 57% of women who were injured, 51% of women who were assaulted more than 10 times and almost half of all abused women who feared for their lives did not call police for protection or help in ending the violence.[13]

There is no doubt that there has been an increased public awareness that family violence is a crime and a serious social problem. Surveys conducted by the Family Violence Prevention Initiative have indicated a high level of public concern regarding family violence. It is likely that this has been a factor in influencing family members or support persons of victims to encourage them to report to police. On the other hand, anecdotal information provided by transition house staff, police officers and victims themselves suggests that the very success of the Framework for Action (and the publicity surrounding the pro-charge, pro-arrest, pro-prosecution policy) has lessened the willingness of some victims to report to police. Many of these victims just want the violence to stop and are not prepared to call the police when they know this will almost certainly mean the arrest of their partner.

The dilemma faced by victims of spousal/partner abuse is described in the Gardner Pinfold evaluation of the victim support service program:

> *"Victims find themselves in an invidious position. They want the violence to end; triggering the intervention of the criminal justice system is one mechanism for achieving this. But this is a two-edged sword because the intervention also triggers a set of negative consequences, real and imagined, victims do not want to endure. For the vulnerable and mostly uninformed victim, it comes down to a question of choosing the less harmful of two bleak alternatives: family breakup, public humiliation and the spectre of financial ruin or poverty; or a life with violence. And this is why, in the cold light of Monday morning, the complaint often would be withdrawn, giving the cycle of violence an opportunity to continue."*

6.5 The Need for Further Study

6.5.1 Provincial Legislation

A number of jurisdictions (Alberta, Saskatchewan, PEI) have introduced provincial legislation to supplement the provisions of the *Criminal Code* in provincial/family law. This legislation generally provides for the granting of protection orders, temporary remedies available 24 hours a day, which include provisions to restrain an abuser from communicating with the victim or his/her family, grant exclusive occupation of the home, direct a police officer to remove an abuser or remove belongings from the home. It permits a superior court to award costs for monetary losses suffered or damage to property and enables the

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[13] Valerie Pottie-Bunge and Andrea Levette, *Family Violence In Canada: A Statistical Profile*. Statistics Canada, 1998, p.11

Maintenance Enforcement Program to collect any awards owed. It allows a justice to give the victim temporary possession of the bank account, vehicle or other assets and can prohibit either party from taking, converting or damaging property or otherwise dealing with property that the other party may have an interest in. In addition, warrants of entry are available when there is a concern that a person who is unable to act on his or her behalf is being subjected to family violence.

The Province has considered the enactment of domestic violence legislation.[14] A series of consultations sponsored by the Family Violence Prevention Initiative were held in May 1993 to discuss the feasibility of enacting provincial legislation to address family violence. Many participants in the consultation were of the view that the necessary legislation to address family violence already existed and that the remedies contained in the *Criminal Code* were simply underutilized. As a result, there was little enthusiasm for an additional piece of legislation. A recommendation was made that an emphasis be placed instead on training justice workers in the appropriate use of current remedies. Instead of enacting new legislation, the Department of Justice decided to implement the Framework for Action Against Family Violence.

A 1996 review of Saskatchewan's *Domestic Violence Act*[15] revealed that the various orders available to women under the provincial legislation were used infrequently. Anecdotal information provided by officials in PEI suggested that the effectiveness of provincial legislation has been limited due to the inadequacy of legal aid resources.

It is recommended that the Department of Justice coordinate a focused consultation with key community and justice system stakeholders to review the experience of provincial jurisdictions which have enacted provincial/family violence legislation and to determine, in light of the results obtained from the Framework for Action, whether the adoption of such legislation would benefit victims of spousal/partner violence and their children.

6.5.2 The Effectiveness of a Pro-arrest, Pro-charge, Pro-prosecution Response to Spousal/Partner Violence

There is no doubt that the Framework for Action policy has increased charge and conviction rates. Such results have been obtained from numerous other studies in Canada and elsewhere. Recommendations supporting the adoption of such policies have been made by recent coroner's inquests and commissions of inquiry in Canada.

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[14] In fact, draft legislation prepared by Brian Norton, Senior Solicitor, Department of Justice served as the basis for legislation in other provinces.

[15] Prairie Research Associates *Review of the Saskatchewan Victims of Domestic Violence Act*, 1996.

While few would deny the importance of pro-charge, pro-prosecution policies in focusing public attention on the social problem of family violence and in the criminal nature of spousal/partner abuse, concerns have been expressed regarding the unintended consequences of the policy. In a recent synthesis of federal Department of Justice research findings on spousal assault, Tammy Landau lists a number of limitations to mandatory charging:

- in many cases, mandatory charging represents a transfer of power from the batterer to the criminal justice system: many women report feeling as disempowered by this process as they were before the policy, when they had more say in police charging practices;
- the options provided by the criminal justice system are too narrow and focused; i.e. they promote separation of the woman from her abuser, when there may be few options and little desire for this outcome on the part of the women;
- mandatory charging represents a uni-dimensional response to a complex social problem, when the criminal justice system cannot deal with the caseload or the social sources of spousal abuse; and
- police continue to exercise discretion in charging, and often do not lay charges, particularly in cases where women are reluctant to give evidence.[16]

Similar views were expressed by criminal justice workers and victims in Nova Scotia in relation to the impact of the Framework for Action. Spousal/partner abuse cases are inherently problematic because of the special (frequently ongoing) relationship between the victim and perpetrator.

In reviewing a number of projects sponsored by the federal Department of Justice through the Family Violence initiative, a 1996 compendium report noted that "no unanimous conclusion was reached regarding the effectiveness or desirability in the recognition and prosecution of family violence. While acknowledging that violence even within a family unit is a crime, the desirability of alternative measures to charging and prosecution is still inconclusive".[17]

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[16] Tammy Landau, *Synthesis of Department of Justice Research Findings on Spousal Assault*, Department of Justice, 1998 (pg. 4)

[17] Lorraine Touchette, *Family Violence: Lessons Learned Through Project Development*, Department of Justice, 1996.

Similarly, recent American reviews of mandatory arrest policies[18] suggest that arrest alone does not deter violent spouses from future violent behaviour and that mandatory arrest should be part of a global community response to spousal/partner violence.

6.6 Next Steps

The Framework for Action Against Family Violence was initiated in response to severe criticism that the justice system was not taking the crime of spousal/partner abuse seriously. Charge rates were very low and the decision to process a case through the justice system depended to a great extent on the wishes of the victim. With little support and inadequate information, it was not surprising that many fearful victims had no interest in becoming involved in the justice process.

Through the efforts of many justice workers and community agency staff and volunteers, the Framework for Action has had a major impact on the response to spousal/partner violence. Measured in terms of increased charge rates, assistance to victims and improved Government-community collaboration, the Framework has been a success.

We believe it is time to undertake a new phase of the Framework for Action, building on the success of the initial program. It is important that we remain vigilant to ensure that the gains we have made over the past three years are not lost. But equally important is the need for government agencies, together with their community partners, to consider the problem of family violence from a more holistic perspective. The reality is that at least half of those abused by their partner return to that partner.

The justice system, while it can aspire to respond swiftly and definitively to criminal acts, will have minimal impact on the interpersonal dynamics of the abusive relationship. While there are undoubtedly significant issues related to power and control which must be carefully considered, there have been some encouraging reports of the positive effect of innovative dispute resolution processes. In many cases these processes are used as an adjunct to, rather than in place of, the formal justice system.

In conclusion, it is recommended that the Department of Justice/Public Prosecution Service Family Violence Committee respond to the recommendations of this report in order to build on the strengths of the initial phase of the Framework for Action Against Family Violence.

It is further recommended that the Department of Justice, in partnership with the Family Violence Prevention Initiative, undertake a comprehensive review of the viability and effectiveness of innovative dispute resolution processes used as an adjunct to the formal justice system in responding to spousal/partner violence.

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[18] Eve and Carl Buzawa, *Do Arrests and Restraining Orders Work?* Sage Publications, 1996.

APPENDIX C

FRAMEWORK FOR ACTION AGAINST FAMILY VIOLENCE REVIEW

[Review by Dawn Russell and Diana Ginn]

FOCUS GROUP QUESTIONS

STAKEHOLDER GROUPS

AREAS OF INQUIRY:

1. How are the existing policies and procedures working?

- What issues, problems, or challenges exist with implementation of the policies?

- Do you think they are being implemented consistently?

E.g.

Police

Are police charging? Arresting? Conducting a thorough investigation? Collecting corroborating evidence? Getting victim statements? Is there a referral to Victims' Services or other victim support service? Etc.

Since policy, are victims more or less reluctant to call police?

Crowns

Are Crowns prosecuting in all cases? Meeting in advance with victim witnesses?
Issues re victim recantation/reconciliation with accused?

How to reconcile pro-charge, pro-arrest, zero tolerance with respecting women's wishes? Is it ever appropriate for the Crown to stay charges, where the woman does not want to go forward.

Courts

Sentencing? Other issues?

Corrections

Are Corrections adequately supervising and responding appropriately to breaches of probation conditions

2. What is needed to make the policies work more effectively? Or alternatively, should they be revised? Eliminated completely?

3. Do the policies serve/ protect women who leave a violent relationship? women who stay in or return to the relationship?

4 .What about relationships within and among criminal justice system players and service providers - how are they working? Have they improved with the introduction of the Framework? What is needed to help them work better?

- Problems with how to share info?

Police - Crown-Corrections- Victims' Services relationship issues?
Linkages between police and child protection? With Men's Intervention Programs? with Transition Houses? (Protocols?)
Impact on children exposed to family violence? (Programs for children?)

4. Even if the Framework policies were working perfectly, is there anything else that could be done to improve the justice system's response? Are there gaps in the Framework? Or other measures that ought to be taken?

Ideas from other jurisdictions - any merit?

- special courts/ prosecutors (Manitoba/ TO)
- specific legislation (Alberta, Saskatchewan, PEI, Yukon)
- early intervention/ treatment/ diversion, for certain cases, after a guilty plea (Ontario)

5. **Prevention - What needs to be done to prevent family violence from occurring, and to prevent recurrence?**

APPENDIX D

FAMILY VIOLENCE FRAMEWORK FOR ACTION REVIEW

INTER-JURISDICTIONAL COMPARISON

SEMI-STRUCTURED INTERVIEW GUIDE

Province/jurisdiction: ____________________
Contact(s): ____________________
Phone: ____________ **Fax:** ________ **email:** ____________
Address: ____________________
Date: ____________________

QUESTIONS

1. **Do you have any directives, policies, procedures, protocols, or practices to address spousal abuse? Describe. Request copy (by email, fax, courier, web).**

applying to :

- **Police**
- **Crowns**
- **Courts**
- **Corrections -Probation**
- **Corrections -Institutions**
- **Victims Services**
- **Other**

2. **Legislation -**

   2.1 Do you have Domestic Violence Legislation?

   - status (draft, passed, proclaimed?)

   - key provisions (emergency intervention orders, time frame for review by superior court, how obtained...)

- perceived benefits, why was it adopted?

2.2 Is it "working"? How? Why? How do you know? (evaluations done? data collected?)
- reduces recidivism?
- provides immediate intervention and protection for victims, preferable to peace bond or JIR? Or only used where evidence is insufficient to charge/arrest? Easier to obtain?

2.3 Key components to its effectiveness (identify critical success factors in implementation)
- e.g. training, coordination, etc.

2.4 Problems, court challenges?

2.5 Plans for change/amendments?

2.6 Other legislative reforms planned/under discussion? (Alberta, Ontario proposals)

3. **Training - Have you conducted any training for criminal justice system professionals in domestic violence? For whom? When? How delivered? Frequency? How funded? etc.**

4. **Coordination - Local and Provincial - Do you have any Interagency coordination or provincial coordination mechanisms to address family violence? Interdepartmental committees, local interagency committees, case conferencing?**

5. **Other related Initiatives underway to address family violence? Specify. (New Identities, bail reform, notice provisions, specialized domestic violence courts, Restorative justice models applied to family violence, etc ...) Request copy of proposals.**

6. **Support Services - Describe range of support services in your jurisdiction (including numbers of programs, services offered...)**

6.1 **Victims' Services (RCMP volunteers, Dept of Justice Victims' Services, VSS - describe)**

6.2 **Women's Shelters/Transition Houses, second stage housing, satellites, safe homes, family resource centres, etc.**

6.3 **Advocacy Programs - specific to support victims through justice system?**

6.4 **Programs for Children who witness/are exposed to FV?**

6.5 **Child welfare involvement? Exposure clause in provincial legislation? Protocols? Are the protocols and agency relationships working?**

6.6 **Men's Intervention/Treatment Programs**

6.7 **Other**

7. **New Plans - Are there any new initiatives for responding planned or under development? New directions?**

8. **Reports/evaluations/proposals for reform/studies - acquire.**

9. **Monitoring Mechanisms - do they have ongoing data collection and monitoring mechanisms in place to assess effectiveness? Audit?**

10. **Any other comments vis a vis measures to address family violence? Prevention?**

Marshall Consulting
Jan. 8/01

APPENDIX E

APPENDIX E

OVERVIEW OF SPOUSAL ABUSE POLICIES AND PROGRAMS

BY JURISDICTION

Marshall Consulting
March 30, 2001

TABLE 1 - OVERVIEW OF SPOUSAL ABUSE POLICIES AND PROGRAMS BY JURISDICTION

PROVINCE/TERRITORY

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
1. Policy Coverage						
- Police	✓	✓	✓ *	✓	✓	✓
- Crown	✓	x *	✓	✓	✓	✓
- Courts		✓ Family Ct	✓*	✓		
- Corrections	✓	✓ Probation*	✓	✓		✓
- Victims' Services	✓	✓	✓	✓		
- Other		✓✓	* being updated	✓		
		- * Crown and Corrections facilities policy under development - policies for Community Justice Resource Centre and Turning Point men's program - Broad-based protocols under development for multiple disciplines (hospital emergency, income assistance, etc)	- Framework for Action under review - comprehensive set of policies, training, victim support, accountability, & interagency coordination/public education - woman, child, elder abuse protocols exist produced by the former Family Violence Prevention Initiative - protocols developed b/w transition house, mens programs, & child protection	- range of policy/ protocols developed for various services for woman, child, and elder abuse - Woman abuse protocols (1991) encompass health professionals, income security, and many others (on web)	- government policy statement (1995) - Crown policy guideline: - use of peace bond - witness testimony - "Tables of concertation" in every region with community resources, education, Crown, police, corrections - protocols between Police-Crown- Community resources (Maison d'Hebergements/ Transition Houses) - multi-sectoral protocols for child abuse - new child sexual abuse protocols among Police-Crown-Child Protection - Plan of Action - information to victims, resources	Implementing policies system-wide as part of Domestic Violence Justice Strategy, a comprehensive prov-wide justice response. Components: - local community interagencies -trained police investigators (using DVSR Form) - coordinated Prosecution led by trained Crowns -focus on expediting cases -victims support through court-based Victim Witness Assistance Program - specialized counseling program- interpreter's program

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
2. Domestic Violence Legislation	x	✓ proclaimed Dec 1996 amended 1998	x	x (under consideration)	x under consideration for spousal abuse only	✓ (not yet proclaimed, likely Fall 2001)
3. Training	x hope to pilot training next year with govt staff in 4 key depts and community agencies using train-the-trainer model target those delivering services to victims or involved with family violence in some way	✓ - training conducted with implementation of Act (train-the-trainer, with police, Victims' Services, Trans House team) - ongoing, difficult to sustain, no new funds, back filling not an issue - Family Violence Coordinator teaches core course at Police Academy for new recruits, 12 hours on domestic violence, child abuse, elder abuse,& sexual assault - once a year, training offered for new police officers & veterans; done by team of Crown, VS, FV Coordinator, Deputy Court Registrar; sessions for specially designated JP's held approx. once/yr; info sessions for other professionals as requested	✓ - mandatory training for all justice system professionals (3000) in 1996/97 using a train-the-trainer model, interdisciplinary approach, and community involvement; no ongoing training - another 3000 professionals/service providers trained by former Family Violence Prevention Initiative (FVPI), including mediators working with the Supreme Court (Family Division)	✓ - extensive training over 2 year period with introduction of protocols, sporadically since; protocols launched at 1 day symposium with 1 day follow-up multi-disciplinary training on regional basis and second day for justice only - contracted with Muriel McQueen Fergusson Centre for Family Violence Research (MMFCFVR) to develop woman abuse curriculum and deliver using train-the-trainer approach; Centre currently offers certificate program in family violence	✓ - pre-service training in domestic violence for police by "police college" - training course for prosecutors every 18 months - training planned with introduction in 2 weeks of new sexual assault policy (second edition) which will have a domestic violence component - joint training for police, Crowns, Child Protection in child sexual abuse based on multi-sectoral agreement - local committees provide training opportunities - Provincial Judges education on woman abuse	- training plan to be developed for the Act - setting up training program as part of new strategy for police, Crown, Victim Witness Assistance Program, Cultural Interpreters, probation and parole officers - 2 annual conferences for Crowns with domestic violence component -specialized 1 wk course in summer mandatory for all new Crowns or Crowns looking to be dv specialists - VWAP annual training for Crowns (2 days) - Ontario Police College Domestic Violence training for specialized investigators (Ministry certified) including use of DVSRForm - training to be provided to 160 new probation staff to be hired

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
4. Coordinating Mechanisms	- "Committee of Ministers" meets 3-4 times/yr - Provincial Coordinating Committee comprised of 6 govt and 6 community reps - 6 regional committees with govt-community partnership in different stages of development; funding for each to hire coordinator to: a) improve/coordinate services, communicate policy (address policy/ systemic issues) and b) carry out public awareness & prevention activities	- Premier's Action Committee on Family Violence just extended for another 5 years - 5 interagency committees comprised of multiple service providers, in 5 regions coordinate services locally; outreach workers are employed in 4 regions through Transition House Association	- FVPI govt-community committee disbanded; interdepartmental committee of 5 depts chaired by Dept of Community Services - some depts retained FV Committees (incl Justice) - some communities kept Interagency Committees on FV (originally 17) to coordinate services, public education	- Interdepartmental Committee on Family Violence - new 1 year Minister's Working Group on Violence Against Women (see new initiatives) - Caring Partnerships initiative funded solely by Muriel McQueen Ferguson Foundation - to set up regional awareness, programs, services, and prevention committees in 12 locations - regional Children-at-risk -teams (CART) have reps from agencies serving abused women under Dept of Family & Community Services	- Interdepartmental Committee issues government policy on spousal abuse, sexual assault - Local Coordinating Committees to coordinate services and initiatives locally (protocols to coordinate the action of local committees) - follow-up on policy undertaken by Interdepartmental Committee	1. Two Inter-ministerial Committees at the ADM and Policy/program level coordinate Violence Against Women prevention initiatives led by Ontario Women's Directorate 2. Joint Interministerial Committee on Domestic Violence (short term) chaired by Justice Baldwin to implement Domestic Violence Justice Strategy 3. Local DART (Domestic Assault Review) Teams (case review of probation cases) and Local Domestic Violence Coordinating Committees
5. Justice Initiatives - specialized courts - Restorative justice - other	x x x - new Child, Youth and Family Services Act proclaimed, Jan 2000 - Victims' Services Assistance program evaluated, changed - Peace Bond study undertaken, conditions made more specific and	x x - alternative measures policy states that, if alternative measures are considered in domestic violence cases, referral is to be made to Victim Services prior to proceeding - training for mediators	x - RJ Framework developed, first phase applying to youth underway, application to family violence under examination - Victims First cell phone and ADT alarm projects - Framework Against Family Violence Review	x RJ - developing Provincial Framework, 1 year mandate, no offences currently excluded, family violence being examined co-chaired by Dept of Public Safety and Justice - violence against women specifically excluded from current alternative measures program	x x - no alternative measures or restorative justice program - court dedicated to domestic violence in Montreal; Crowns and Judges deal only with domestic violence cases; minor cases are dealt with by municipal courts in Montreal and resources are available to help the victim	✓ x - no RJ for FV but Owen Sound exploring First Charge Intervention Pilot Project where an offender with first charge who accepts responsibility pleads guilty, goes to a PAR program, appears before a community "change panel" post-conviction/ pre-sentence.

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
	checklist attached to application ; Public legal information produced on peace bonds, judicial sessions held with police to discuss appropriate use of peace bonds	- Police- Child Welfare referral policy/form for children at domestics			- Sexual Assault policy and training	**Legislative reform proposals:** exploring amendments to address breaches of civil restraining orders to make them criminal; either amend CC 127 or create new offence. **Implementing specialized Domestic Violence Court Process:** - in large urban settings, specialized domestic violence courts with dedicated team of Crowns, Judges, VWA staff; in other centres, "specialized process" to respond to dv cases based on early contact with victims, support via VWA program - expanded from 2 to16 in 2000/01, to 24 by 2001/02 ($10 million in new funding), with a plan to cover as many of the 59 court sites as possible - likely to proceed via 2 streams - early plea (with immediate access to PAR and return to court for sentencing, likely probation or conditional discharge eg. based on model in North York

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
						court) or trial (concentrates on evidence gathering, supporting victim) **- cultural interpreter program** - police, Crowns, and VWAP can access interpreters at scene or for meetings for victims who don't speak English or French **- expanding Victim-Witness Assistance Program** from 23 sites to all 59 court sites (to have 1 in every court)
6. Support Services **6.1 Victims' Services**	✓	✓ - Office of the Attorney General	✓ - Dept of Justice Victims' Services Division - RCMP Volunteers - Halifax Regional Police Victims Services (follow-up calls next day/within 24 hours after police called to domestic dispute)	✓ - 4 police-based Victims' Services - RCMP Volunteers - Dept of Public Safety Victim Services located throughout province offer support, trauma, short term counseling, VIS, VIS Transportation program, counseling referrals, compensation - Community agencies provide services and prevention programs aimed family violence: Beausejour Crisis Intervention Centre; Kent Co FV Prevention Program;	✓ - Dept of Justice Victims' Services (called "CAVAC") in 11 sites around province, support provided to go through the justice system - transition houses assist victims	✓ - Ministry of Attorney General Victim-Witness Assistance Program (in 29 sites with plans to expand) - VCARS (Victim Crisis Assistance & Response Service) in some sites, volunteer org -police-based victims' services All coordinated at provincial or local level

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
				Restigouche FVIntervenors Fredericton Sexual Assault Centre		
6.2 Shelters	- 8 Transition Houses - 8 Women's Centres - 1 rape crisis centre (prov-wide service) - 1 Provincial Assoc Against FV	- 1 transition house - 4 staff providing outreach services in 5 regions - 3 second stage housing (self-contained apt units; services through outreach worker)	- 9 Transition Houses -1 Mi'kmaq Family Treatment Centre (2 sites) - 5 second stage housing - 6 Women's Centres - 2 counseling programs for abused women - 2 sexual assault centres	15 shelters 1 dedicated aboriginal	- approx 50-60 Maison d'hebergements/ transition houses	- 98 shelters ~ 40 family resource centres (multi-purpose) ~ 18 second stage housing (no longer funded) - 0 safe homes - 8 aboriginal shelters - 100+ counseling programs for abused women (individual and group) - ~ 90 transitional victim support workers in ~ 50 sites
6.3 Advocacy	x	x	x	x	x	x
6.4 Programs for Children Exposed to Family Violence	x	x	x (no formal programs, except as provided by trans houses on a limited basis, Kentville CAPC program)	x (limited programming by some shelters)	x - Child Welfare studying this issue to identify where children are involved in domestic violence cases; project involving Health Services and Justice in progress	✓ 61 early intervention programs for children exposed to family violence (31 agencies providing 61 groups) based on psycho-educational model; groups for children 4-16 and separate groups for moms on issues dealing with their children/ parenting

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
6.5 Child Welfare Legislation with clause on exposure to domestic violence/ Protocols (specialized)	✓ no specialized protocols on child witnesses of domestic violence	✓ - Police- Child Protection protocol for Children Exposed to Family Violence (both RCMP and Municipal police) results in mandatory reporting and automatic referral (policy and 1 page referral fax form developed) where children living in residence of domestic violence incident; CFS calls police to get details, investigate, opens case or refers for counseling and support	✓ Halifax Regional Police Reporting form; - all child welfare agencies required to have protocol with police but may not current - protocols between police-transition houses-men's intervention programs but practice varies; training and protocol review needed	✓ - nothing specific in protocol to children exposed - recommendation of Children Come First " report addresses children exposed to family violence	x under study; no legislation yet	✓ - recent amendment to CFS Act to lower threshold where child may be at risk of serious emotional harm by exposure to domestic violence - protocols and joint training b/w Children's Aid Societies and Violence against women workers
6.6 Men's Programs	Treatment in facilities: - Level I Education group run 3 times/yr in St. John's, 8-10 offenders per session, 10-12 sessions of 2-2.5 hours, most are incarcerated but do accept offenders on probation, most take it on recommendation of court as part of prison term or at discretion of officer supervising case; lso periodically offered in other institutions - Level II - more personalized treatment,	- 1 Corrections-based program provided across province as required (Office of AG, Community Justice Resource Centre, Turning Point program) - most court-ordered but voluntary too	- 6community-based programs funded by Dept of Community Services - 1 Mi'kmaq Family Treatment Centre (not funded) - 1 probation-based group	In 1999/2000, funded 49 partner abuse programs & 121 anger management programs in province, court-mandated under correctional supervision (probation or conditional sentences) - NB-Canada corrections pilot project - incarcerated provincial offenders provided federal programs	some programs exist - GAPI Program, treatment ordered by the courts as a condition of probation	~ 44 Partner Assault Response Programs - includes a partner outreach component (SolGen funded) - 59 court jurisdictions, ~1/3 have PAR programs and seeking funding for all 59 - 16-20 weeks duration, group counseling - court-mandated, no funded programs for voluntary participants but will accept on a fee for service basis

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
	targeting offenders who have completed Level I or comparable in community, only offered in 1 institution in prov Treatment in community contract with John Howard through Learning Resource Program, a low intensity program for probation or conditional sentence offenders under supervision, mandated, 2 sites with other sessions periodically offered by probation Some groups affiliated with Psych Hospital for mental health (non-justice) clients					
6.7 Other		3 projects: 1. Legal Aid and Social Justice for Women In PEI 2. Women's Experience with Justice system 3. Justice Options for Women who are Victims of Violence	Maxwell-George Case Review implementation plan under development to include training for Child Protection-Transition House-Men's Intervention protocols and other measures	- Early Childhood Initiatives may have some impact as mothers/parents experiencing abuse may receive services/referrals through that program - Support to Single Parents Program (Moncton) - Muriel McQueen Fergusson Reserach Centre on Family Violence, UNB - 13 research reports on family violence	Crisis lines for women victims of spousal abuse	

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
7. New Initiatives (non-justice)	- 5 year strategy ended March 2000; new 5 year Family Violence Prevention Initiative implemented; aim is improved integration of violence prevention in depts and improved coordination regionally with community participation - family violence policy lens developed for use in 4 key depts, awaiting final deputy approval - public education (school survey & viol prevention materials/ modules; brochures on assault)	1. 5 year Family Violence Strategy and Premier's Committee renewed 2. Public Awareness/social marketing strategy developed; 4 phases - Phase 1 - survey of Islanders attitudes toward violence/abuse - phase 2 - targets professionals people said they would turn to for help; focus groups to assess attitudes and identify their needs 3. Training for professionals as protocols developed 4. Projects - as above 5. Workplace Violence 6. Policy/protocol development 7. Physician training in family violence and pre-natal psycho-social assessment tool	x	- Minister's (for Status of Women) Working Group on Violence Against Women formed, joint govt-community committee to develop strategic action plan focusing on service delivery, public education, and prevention requirements, 1 year life span - "Its Up to Me" on healthy relationships course incorporated into Dept of Educ curriculum (optional) - Making Waves dating violence program for teens (weekend workshops with teens who then lead anti - dating violence activities in home high school) (Both are community-based by CARR and Making Waves) - Community Caring Partnerships Committees led by Muriel McQueen Foundation, public education and coordination	- Confidentiality - introduced legislation into the House of Assembly to permit the exchange of information where there is violence or the threat of violence - Public awareness campaign - focused on one issue for three years including 1) spousal/dating violence 2) sexual assault	- Children's counseling Program - Transitional Support Worker Program - Hospital-based Domestic Violence Pilot Program - in ~ 10 sites, screening for domestic violence in hospitals/emergency rooms - Community Report Card Pilot Project- 4 pilot sites - Safety First Audit Pilot Project - Windsor using tool to conduct audit on how well justice and other agencies respond to domestic violence (3 external agencies audit a fourth)

POLICY/ PROGRAMS	NFLD	PEI	NS	NB	QUEBEC	ONTARIO
8. Reports	5 Year Strategy Report Peace Bond Study	- Monitoring Study of DV Act (1998); Evaluation of Act (due March 2001) - Family Violence & Justice System Response Report (March 2000) - Literature Review - Evaluation of Transition House Sexual Assault Centres - Police Response and Children Exposed to Domestic Violence report - Psycho social Assessment Tool for Physicians	Framework Review (2001); Maxwell-George Inquiry (Dept of Justice) and Case Review (Dept of Community Services) (2000); Framework Evaluation (Report & Appendices, 1997); Victim Support Services Evaluations (2); Family Violence Tracking Project (1995); Law Reform Commission Report (1995); Domestic Homicide Review (1995)	- "Children Come First" Report followed Jacqueline Brewer's death, govt. will use it as a guide but no specific action plan, some recs implemented - Public Safety Dept produces annual report on family violence assaults, homicides, sexual offences - Child Death Review Committee Report	- Coroner's Inquest into a murder-suicide; Gaumont-Lirette findings led to new legislation permitting more liberal release of information to ensure professionals aware of a potentially lethal situation can share that information	- May-Iles murder-suicide Inquest (213 recs) - Joint Committee on Domestic Violence/Justice Baldwin Report - Metro Toronto Woman Abuse Council monitoring report of 2 specialized courts
9. Data Collection	Over sample requested with 1999 GSS	- Repeat Attitude Survey in 5 years - Data collected on DV Act - no police tracking data - some court data Victim Services statistical reports	-Internal police audit - Some court and corrections data on JOIS; periodic review - no ongoing individual case tracking or annual reporting	- Public Safety Dept audits municipal police to ensure they have a policy; RCMP has national policy - woman abuse statistics system implemented (police and court aggregate data); victim-offender relationship variable in new court info system (NBJIS); victim component under development in Dept of Public Safety; Client Information System (to be on-line spring 2002)	- extensive annual police report on conjugal violence (1999 most recent) - Justice system issues the number of cases but a number of accusations can involve one offender	- no fv flag or ability to identify fv cases except cases streamed into 2 specialized courts - data collection has been through periodic surveys of cases at domestic violence courts - integrated justice project still under development - beginning to collect court results

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TABLE II - OVERVIEW OF SPOUSAL ABUSE POLICIES AND PROGRAMS BY JURISDICTION

PROVINCE/TERRITORY

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
1. Policy Coverage							
- Police	✓	✓	✓	✓	RCMP	RCMP	RCMP
- Crown	✓	✓	✓	✓	Crown	Crown	Crown
- Courts	✓*	x	✓	✓*			
- Corrections	✓	x	✓	✓			
- Victims' Services	x		✓	✓			
- Other	* for Domestic Violence legislation - Women's Advocacy Program policy under development - Victims' Services policy under development in response to Victim's Rights Act to be proclaimed Aug 2001			1993, updated in 1996 and 2000 as part of Violence Against Women in Relationships (VAWIR) Policy - * for JP's and Trial Coordinators - Crown Practice bulletins also exist - Interministry Handbook/Protocols on Child Abuse	follow federal policies	follow federal policies	follow federal policies
2. Domestic Violence Legislation (year proclaimed)	✓ 1999	✓ 1995	✓ 1999	x	✓ 1999	x	x
3. Training	- extensive training conducted for the DV Act - currently mandatory 1 day training for all Winnipeg police officers in family violence underway; 60 officers/session & recruit	- initial training/info on Act and fv took place in 1995 - now going out with improved training pkg to 23 sites to conduct 3 days of multi-	DV Act - Police: train-the-trainer approach used initially prior to proclamation of Act, trainer identified from every police agency	- extensive training conducted with intro of VAWIR policy in coordination with police, Crown, and VS Workers - RCMP now training every officer in relationship	Chief Judge Territorial Court set up training for JP's on Act - Victims Services provides 8 training sessions/year to	none	none

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POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
	training - regular training for Crown Attorneys regular training for RCMP	disciplinary training on the Act and dynamics of family violence (and to train trainers to offer it on an ongoing basis), police and community working together to deliver - training to those designated under law (police, courts, JP's, VS) to walk them through process, followed by single discipline training on their specific roles	(RCMP, Municipal, First Nations), 3 days of training offered by team of OPFV, Policing Services, Crown; training video and manual given to every officer/trainer; centralized training followed-up by holding annual community level training coordinated by Justice and Children's Services - Office for the Prevention of Family Violence (OPFV) offers training - ½ day education on fv and the Act, ½ community planning to mobilize partnerships **Family Violence Training** - annual training at Justice College offered by Alberta Justice which includes Crown, police, corrections, and provincial Victims Services Association	violence and criminal harassment policy - separate annual training for Crowns - 4 forums for VAWorkers in last 18 months - Victims Service worker training (for all 3 program types - police, Crown, & community) - funding for coordinated training is provided by Victim Services Division while each agency funds its own training	police, Crown, community; ongoing		

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
4. Coordinating Mechanisms	Interdepartmental Committee - working group of officials	Interdepartmental Committee on Family Violence - STOPS - a provincial government -community partnership to address family violence issues, supports development of partnerships at community level; - 2 regional committees	Interdepartmental Committee on Family Violence - local interagency committees - Regional authorities responsible for funding decisions and range of regional services - within Justice, coordinating committees for Crowns and police	6 funded and 40 non-funded local interagency coordination committees with Crown and police representation	x	x	x - none as of yet, identified as a priority
5. Justice Initiatives - specialized courts - Restorative justice - other	✓ x - RJ in early stages only; application to family violence under examination - Winnipeg Family Violence Court - specialized prosecutions unit - early identification pilot project to identify repeat or high risk clients and intervene pre-charge in police-social worker teams (Winnipeg Police) - Legislative Reform-examining recommending changes to the Canada Evidence Act re: proceeding without victims	x x - no RJ as insufficient community resources to support it - working with RESOLVE (Family Violence Research Centre) to evaluate justice and community response to fv in 3 Prairie provinces	✓ - domestic violence court in Calgary operational for 1 year as part of 4 year funding provided under federal Crime Prevention strategy - Child Abuse teams of police and social workers - 4 Spousal Abuse Teams of police and social workers (Edmonton, Calgary, Lethbridge, Killam RCMP) - elder abuse teams of police and social	x x - specialized domestic violence court models under consideration - Alterative Measures - under policy, cases of domestic violence are considered only in exceptional circumstances, with extensive guidelines and monitoring - Aboriginal Restorative Justice and Alternative Measures underway - implementation of Criminal Case Flow Management Rules have resulted in earlier contact with victims in court	✓ x - RJ but nothing specific to family violence, topic under discussion - family group conferencing, community justice committees, pre-charge diversion programs, and sentencing circles exist; no policy on how to handle family violence cases RJ Working Group to develop best practices,	x x - domestic violence specifically excluded from alternative measures program; local justice committees exclude family violence cases	x x - RJ under examination but not much exists yet, nothing specific to domestic violence - court not designated but domestic violence cases are the largest single type of case seen

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
	- victim notification within 48 hours by WAP - police domestic violence teams		workers in Edmonton and Calgary - risk assessment, referral, follow-up, support	process - Protection Order Registry - main purpose to improve enforcement of both criminal and civil restraining orders, avail 24 hrs/day but has low utilization rate due to lack of PR to police, incomplete TA or police release information, labor intensive- not successful - VINES - Victim Information and Notification System - automated phone system to inform victims of offender release from provincial facility - low utilization -High Risk Offender Notification Program (for federal inmates) - 1-800 Victims Information Line - providing referrals to services - Cell Phone Initiative - 13 programs, planning to expand	protocols to identify appropriate cases for restorative justice - Domestic Violence Treatment Option Court - special docket on Mondays ½ day set aside to expedite cases; accused has option to plead guilty & attend treatment pre-sentence, report sent to court for sentencing; not a trial court		

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
6. Support Services 6.1 Victims' Services	Dept of Justice offers full range of services for non-family violence victims; criminal injuries compensation for all victims - see Women's Advocacy Program - coordination of victim services under development	17 police-based coordinators (RCMP/Municipal) - 8 Aboriginal resource officers in 5 centres - 3 centres with Victim-Witness Coordinators	- most are police-based, coordinated within Dept of Justice by Victims' Services Program	Victims Service Division co-ordinated, funds: - 90 Crown Victim/Witness Service workers (70 FTE's), 42 Crown counsel officers - 80 Police Victim Services - 41 non-profit community-based Specialized Victim Services, specialized by crime type (child, woman, elder abuse) or population group (multi-cultural or aboriginal) - 21 sexual/woman assault centres - all coordinated locally by protocols	- Family Violence Prevention Unit - incl Dept of Justice (federal) Victim Services/ Women's Program (6 sites) - long term counseling, outreach, court support, crisis intervention, VIS, no criminal injuries compensation -RCMP volunteer Victim Assistance Workers - counseling provided for victims and offenders of both sexual assault and spousal	2 Victim Coordinators in Dept of Justice, no criminal injuries compensation, assistance with VIS - contract with community-based groups to provide support, information, and follow-up (e.g. Native Women's Assoc., Friendship Centre)	Victim/Witness Assistance staff operate out of Crown office
6.2 Shelters	- 10 shelters - 8 women's resource centres - 4 second stage housing Urban Support Programs: - immigrant women's assoc. counselling unit - community health clinic work with victims, children, and men who abuse - Ma Ma Wi Chi Itata - multiple service centre, social service based, funds fv	- 14 shelters - 4 safe homes - 4 second stage housing - 12 crisis services - 5 counselling programs - 8 Aboriginal Family Violence Programs	29 shelters, satellites and second stage housing	- 87 transition houses, safe homes, and second stage houses - Bridging Program - employability program for abused women - 37 women's centres - aboriginal family violence programs - sexual/woman assault centres	4 transition houses - 1 women's centre	12 transition houses - limited number of safe homes operating in larger centres (woman usually has to leave community)	6 women's shelters - social services offer some support - some independent societies centered on family violence issues - most women

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
	counselling program - Native Women's Transition Centre - longer term residential support centre - Laurel Centre - women with unhealthy coping behaviors/addictions as a result of child sexual - Community Health Centre - fv counselling unit - 3 supervised access services for families with violence in background - private contract funding for people who work with abusive men outside Winnipeg - Men's Resource Centre - counselling for adult male sexual abuse survivors, info, referral **NOT ANNOUNCED YET** - Couples Counselling (strict screening protocol, research component)						have to leave the community to receive service

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
6.3 Advocacy	Women's Advocacy Program offered in 6 sites to women whose partners have been charged with domestic violence related offences - provides services to women including notification, consultation, safety planning, crisis counseling	x	- in specialized court in Calgary - in Family Violence Prevention Centre in Edmonton - Calgary Legal Guidance all provide free assistance and advocacy with obtaining provincial DV Act restraining orders - Edmonton Protection and Restraining Orders Project (PROP) assists clients in obtaining restraining orders; assistance in orders under Protection Against Family Violence Act	✓	women's centre provides advocacy, support, information, referral	Status of Women Council runs programs - Yellowknife Women's Society runs drop in centre and family support programs	women's groups in some communities usually funded through Brighter Futures program
6.4 Programs for Children Exposed to Family Violence	✓ - short and loner term counselling programs for children - supervised access centres for families with exposure to domestic violence	✓ - 4 support programs for Moms and Children exposed Family Violence - limited mental health resources and limited programs in 3 community-based centres - 1 transition house provides children's	✓* With the Calgary Domestic Violence Court only, funding made avail for children witnessing violence - Group and individual counselling for children and youth exposed to family violence; for those who are abusive or	✓ - individual and group counselling for children exposed to dv; support to parent	CATS Child Abuse Treatment Service may support children exposed to family violence	x	x

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
		group (not funded by govt)	aggressive at home or school; for parents - crisis nursery/emerg respite (for children up to 8 years old)				
6.5 Child Welfare Legislation with clauses on exposure to domestic violence/ Protocols (specialized)	✓ police- CP- shelter protocols Protocols between shelters and - Child Protection - Income Security - Dept of Housing	✓	✓ joint protocols among police-shelters-Child Protection	x	x	x	x
6.6 Men's Programs	- 1 Partner Abuse Short Term (PAST) provincial program offered through 7 probation offices and 6 institutions (12-2 hour modules offered in various configurations (days, evenings, weekends), contracted out, zero tolerance policy - breached if late for session - 1 long term program offered through Headingly (prov corrections facility) Domestic Violence Unit specifically for DV offenders - long term program (a recommendation of Lavoie) pilot tested and plan to expand prov-wide with	- 10 funded by Dept of Health - Alternatives to Violence programming for Abusive Men, 2 phases of 16 weeks, high drop rates at front end, ~ 50% are court-ordered, evaluation in 4 areas of province using CTS II scale to administer to men and interviews with partners to measure improvement (data to be gathered by June 2001), most groups co-facilitated by Justice offices - ~ 50% of program participants are	15-20 programs not currently funded - proposal in to fund treatment programs under province-wide Treatment Framework which will define criteria and standards, have evaluation component, 3 year phase-in	~ 30 corrections-based programs, includes voluntary but usually court-mandated offenders	1 court-mandated Assaultive Husbands treatment program offered through Family Violence Prevention Unit (individual and group); outreach to rural areas - Sex Offender Risk Management Program	x except as provided for individuals in institutions	program review underway to determine if there is a cultural basis for many corrections based programs including assaultive men's programming

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
	resources	aboriginal and use aboriginal facilitators - some programs offered by Justice independently					
6.7 Other			Working with DOVE (Doctors Opposing Violence Everywhere), a national body comprised of Medical Societies reps from each jurisdiction, to offer pre-service family violence training for family physicians next fall at Alberta College - shelter for abused seniors- Kirby Centre, Calgary	- public education campaign - public education materials, stalking brochure, etc. - Stopping the Violence Awards - Violence Prevention Partnership Councils	Victims Services FVPU provide training and education on family violence and sexual assault		separate dept for culture, language, elders, and youth to develop and implement Inuit Qaujimajituqang it (traditional knowledge) at all levels of government policies, processes, and services
7. New Initiatives (non-justice)	- expanding aboriginal shelter -Men's Resource Centre - Long term counselling for children exposed to family violence - supervised access centres for families with abuse - benefit/pension plan for all funded staff - Couples Counselling - ongoing Public Awareness campaign (Nov is Family Violence Prevention Month)		- Treatment for Abusive Men Framework - Elder Abuse Action Plan under development - Social Marketing, currently running 13th Family Violence Prevention Month campaign - cross Ministry Seniors Initiative with 10 year plan to be developed				establishment of informal men's and women's groups in some communities

POLICY/ PROGRAMS	MANITOBA	SASK	ALBERTA	BC	YUKON	NWT	NUNAVUT
8. Reports	- Lavoie Inquiry - 911 Inquiry (to come) - Winnipeg Family Violence Court Evaluation - Police Tracking Study - Evaluation of Partner Abuse Programs (due next year) -Pedlar Report (1991)	- 2 evaluation reports on Act (1996,1998) - work in progress to begin study tracking domestic violence cases in Sask	-Evaluation of DV Act - Alberta Justice Spousal Abuse Status Report		Spousal Assault and Mandatory Charging in the Yukon study	x	x
9. Data Collection	- Winnipeg Family Violence Court data - police data on calls for service and charges laid	- no automation at Queen's Bench - data among municipal police inconsistent, RCMP data insufficient	- court data on DV Act - policing data supplied quarterly to Justice on incidents responded to and action taken - Women's Shelter Information System - re-designed planned	- police, court, corrections all maintain statistics on VAWIR cases - monitoring conducted by Director, Special Justice Program with recommendations to Prosecutions Branch and Regional Management committees; local coordination committees identify issues to Crown member		no specific domestic violence data collection system,; RCMP data, offender management system	x

APPENDIX F

APPENDIX F
Prepared by Carolyn Marshall, Marshall Consulting, April, 2000

DOMESTIC VIOLENCE LEGISLATION: JURISDICTIONAL DESCRIPTIONS

Following is a brief description of the domestic violence legislation in the six Canadian jurisdictions which have such legislation, as well as a summary of the comments received from stakeholders in these jurisdictions working with the legislation, and highlights of any reviews done of such legislation.

Saskatchewan

Saskatchewan was the first jurisdiction to pass legislation aimed at protecting victims of family violence. The *Victims of Domestic Violence Act,*[1] proclaimed in February1995, was intended to provide a broader range of remedies than those available under the *Criminal Code* or other provincial legislation. The objectives of the *Act* were to:

- promote the message that domestic violence is a serous concern for the justice system;
- assist victims by providing additional legal tools which fill gaps in the justice response to family violence;
- focus on assisting victims of domestic violence, in addition to prosecuting the offender;
- facilitate greater access by victims to longer-term remedies by expediting Victim's Assistance Orders; and
- assist domestic violence victims who are unable to act on their own by allowing the use of Warrant of Entry.

Its provisions include:

- exclusive occupation of home to the victim;
- removal of the respondent from the home;
- no-contact orders and an order that the respondent cannot attend at a specific place;

- accompaniment by a police officer to remove personal belongings; and
- any other provisions necessary (e.g such as removal of firearms, leaving a car with the victim).

The length of orders is not stipulated in the *Act* but in practice it is 30-120 days depending on how long it takes to access services and community resources in the area (taking into account delays in accessing lawyers or Legal Aid). In urban centres, 30 days is usually sufficient but, in rural areas, it takes much longer. Within three working days, the Order is sent to the Court of Queen's Bench which can approve, rescind, or call for a hearing. Very few are not confirmed, and where they are not, it is usually for lack of evidence of an emergency or of consent on the part of the victim. Orders are initially granted by Justices of the Peace who are available 24 hours a day by a 1-800 number on the basis of a call from police.

Between January 1 and December 31, 1997, 394 Emergency Intervention Orders were requested. In most cases, they are issued by the Justice of the Peace and subsequently confirmed. They are used almost exclusively in spousal abuse situations, with a few covering situations of child abuse. Very few Victim Assistance Orders are requested and Warrants of Entry are not used at all.

Longer-term Victims' Assistance Orders are available for up to a year upon application by the victim to the Court of Queen's Bench. The Order has the same provisions as those available under an Emergency Intervention Order plus they can provide for:

- financial provisions – temporary possession of vehicles, credit cards, bank cards;
- monetary compensation;
- criminal injuries compensation within statutory limits;

- prohibition of the respondent's attending any place attended by the victim/victim's family; and
- no contact by the respondent with the victim's family, employer, employees, or others;

Breaches are dealt with under an offence and penalty section within the *Act* itself.

Critical Success Factors

Critical success factors include:

- extensive consultation with multiple justice and community-based stakeholders involved in responding to domestic violence;
- comprehensive training strategy (training for specially selected Justices of the Peace; 2700 police and crisis intervention staff were trained by teams consisting of a police officer and a family violence specialist); and
- selection criteria for Justices of the Peace who were chosen based on their family violence knowledge and expertise. As well, the Justices represented various linguistic groups and geographic (rural and isolated versus urban) areas of the province. They received instruction in legislative and legal procedural issues. They were not existing Justices of the Peace trained in family violence, but family violence specialists trained in legal process and the role of a Justice of the Peace.

Key Benefits

The *Act* is easy and simple to use for front-line officers, taking only about 20 minutes of police time. Officials state that Orders are now being entered on CPIC immediately and the victim, respondent, police, and court have a copy. (Tracking orders and breaches were issues identified in the evaluation). There have been no amendments or legal challenges to the legislation and there are no plans to amend it.

One key benefit is the immediacy of assistance rendered to the victim. Exclusive occupation of the home is the most useful provision because it enables a victim and her children to remain in the home and in their communities where they have access to family, school, employment, and support services.

Evaluation confirms that all key informants believe the *Act* is achieving its intended objectives.

Issues and Concerns

There are difficulties associated with its application on reserves, as identified in the 2001 Review, but the Emergency Intervention Orders are used with increasing frequency by excluding the provision for exclusive use of the home. Officials believe the *Act* to be working, but more public education and training are needed to increase utilization rates further.

Saskatchewan undertook an evaluation of its *Act* in 1996[2] which found that utilization of the Emergency Intervention Orders was rising but this was not the case with Victim Assistance Orders and Warrants of Entry. As well, while Emergency Intervention Orders were being effectively used for spousal abuse situations, very few were used for children, elderly parents, or other cohabitants experiencing abuse. In addition, effective collaboration among police, mobile crisis workers, Justices of the Peace, Judges, lawyers, victims' services, and shelter staff was insufficient due to differing interpretations of what constituted an emergency, the situations under which orders could apply and lack of knowledge about family violence. A need for more broad-based, ongoing interdisciplinary training, covering the dynamics of family violence as well as the legislative provisions, was identified in order to address these concerns. Public education was needed to increase awareness of the *Act* and its remedies. A second evaluation was conducted in 1999 with similar findings[3].

Further, many police officers were reluctant to use Emergency Intervention Orders where charges were laid, preferring charges alone and reserving Orders for situations where there is insufficient evidence to lay a charge or where victims do not support a charge being laid. Recommendations were made that both be used, consistent with the charging directive. Record keeping and tracking of breaches were deficient.

Saskatachewan has mounted a large training effort to be conducted in three stages:

- 3 days of multi-disciplinary training on the *Act* and dynamics of family violence to be delivered in 23 sites to all players involved in family violence;
- training for those designated under the law (police, victims services, courts, Justices of the Peace), to walk them through the process; and
- single discipline training for Legal Aid, police, Justices of the Peace, and crisis coordinators on their roles and responsibilities and on local policies and protocols.

This involves a community development process whereby stakeholders learn to work together to identify and resolve issues to meet victim/community needs. This is an updated, improved version of training to be delivered on an ongoing basis, initially through a hired trainer but subsequently through in-house staff in various agencies designated and trained using a train-the-trainer approach. In the initial round of training, individuals will be identified to become trainers/facilitators. Backfilling costs have not been identified as an issue of concern to agencies. The training module was developed with the input of shelters and community resources.

Prince Edward Island

Prince Edward Island proclaimed its *Victims of Family Violence Act*[4] in December 1996 after two years of study, development, and implementation preparations. The *Act* differs from

Saskatchewan's in that it includes emotional abuse in its definition of family violence, recognizing that, while this form of abuse could not, *per se*, be prosecuted under the *Criminal Code*, emotional abuse nevertheless results in long-lasting and deleterious effects for the victim and is a particularly insidious and common form of abuse. Extensive training was conducted prior to the implementation of the *Act*.

The *Act* was introduced as a complementary measure to the *Criminal Code*; it was not intended to replace the laying of criminal charges by police where behavior is criminal in nature. It was subsequently amended in 1998 following a court challenge to the scope of the definition of family violence (which included emotional abuse), and to the provisions pertaining to the time allowed for the respondent to contest the application, based on the *Charter of Rights and Freedoms* and the *Constitution Act, 1867*. The Court upheld the statutory definition of family violence, ruling that the inclusion of emotional abuse was not overbroad; the legislation was within the competence of the provincial legislature; the standard of proof "on the balance of probabilities" was sufficient; and the statutory delegation of authority to a Justice of the Peace to issue an emergency protection order within the limits prescribed by the *Act* was valid.[5] The Court did say, however, that the process did not give the respondent adequate notice of a judge's confirmation of an Emergency Protection Order or full opportunity to be heard and that 20 days should be of sufficient duration for such an order unless it was extended by a judge. Amendments were made to the *Act* to address the latter concerns regarding notice provisions, but they did not change the time frame because women in a Monitoring Study of the *Act* identified the time frame as too short.

Key Provisions

The *Act* enables the issuance of an Emergency Protection Order, a short-term order which can:

- direct police to remove the abuser;
- order no contact with the victim or the victim's family;
- order the abuser not to take, sell, or damage property;
- stop any further violent acts;
- grant the victim exclusive occupation of the home;
- grant possession of certain personal property (such as a motor vehicle, medical or credit cards, house keys);
- grant the victim temporary care and custody of the children;
- direct a police officer to accompany the victim to the home to remove personal belongings; and
- prohibit the publication of the victim's name and address.

Emergency Protection Orders are subject to review within 5 days by a Superior Court, upon which time a judge can confirm or change the order or direct a re-hearing of the application.

The orders are available 24 hours a day. Police call one of 24 specially designated Justices of the Peace in the province from the scene of an incident, and orders can be granted immediately via a hearing held over the phone. Orders are effective once the abuser is informed. Although Emergency Protection Orders have a 90 day legislated limit, most are for 20 days.

A Victim Assistance Order is a longer-term remedy intended for use when an Emergency Protection Order expires or in a non-emergency situation which requires the victim to apply to the Prince Edward Island Supreme Court. In practice, they are rarely used–a lawyer is needed–but Legal Aid resources are insufficient, women are too intimidated to proceed on their own, and lawyers are unfamiliar with the provisions or prefer not to use them, opting for the use of the *Family Law Act* to settle custody, access, support, and property issues.

Other features of the *Act* are as follows:

- inclusion in the definition of family violence of emotional abuse as well as physical and sexual assault of the type already covered under the *Criminal Code*;
- inclusion of offences and penalties such that breaches are enforced under the *Act* and not the *Criminal Code*;
- exclusion of warrant of entry provisions (where entry is refused and there is suspicion of domestic violence occurring).

Benefits

The key benefit is that women and children are permitted to remain in their own homes, in situations where it is safe to do so. There is also a belief, to be examined in the current evaluation, that the *Act* has reduced recidivism in early stages of abusive relationships. Data from the Monitoring Study indicates that 75% of women separated from their abuser following police intervention and issuance of an order. From the victim's perspective, the consequences for the abuser are minimal in that, for Emergency Protection Orders there is no requirement for a lawyer or formal court process with the threat of criminal sanction. Not many respondents breach the orders.

Changes Under Consideration

Some practical application issues are that police find the process of securing an order time consuming, so methods to streamline the process are under consideration. One area of concern is short-term financial assistance which was more readily available through social assistance in the past. They are now considering adding a provision to the *Act* enabling the awarding of interim child support.

Further, police are of the view that the penalty provisions would be better placed under the *Criminal Code* rather than the *Act*, as they are generating only a simple fine and are not serious enough.

A Monitoring Study[6] was conducted after the first year of implementation which found that:

- the legislation is an improvement; victims, justice and non-justice stakeholders highly support it;
- about 50 Emergency Protection Orders were granted per year; very few were denied;
- 75% of victims separated from respondents; 25% reconciled with no further violence;
- Victim Assistance Orders are not being used due to lack of resources for legal assistance; and
- the public and victims were not aware of the *Act*.

An evaluation of the *Act* is currently underway with an expected completion date of March 31, 2001.

The Yukon Territory

The Yukon Territory developed the *Family Violence Prevention Act*,[7] which became effective in November 1999, based largely on Saskatchewan's legislation. Its provisions are similar to that of Saskatchewan as well. The definition of family violence is broader than that used in Saskatchewan including "depriving a person of food, clothing, medical attention, shelter, transportation, or other necessaries of life."

The *Act* enables the issuance of Emergency Intervention Orders granting:

- exclusive occupation of the matrimonial home;
- removal of the respondent;
- police accompaniment to remove belongings;
- no communication;
- firearms prohibition/surrender; and
- other conditions as the court deems appropriate

Emergency Intervention Orders are granted upon appearance before a designated Justice of the Peace in Whitehorse or by telephone outside Whitehorse. The order must be reviewed within 3 working days by a Superior Court which can confirm it or direct a re-hearing. The legislation also includes the longer-term Victims' Assistance Order which can be granted by the Superior Court. The *Act* is not utilized much, given that only 35 Emergency Intervention Orders were granted in the last year for a population of 30,000. Very few Victim Assistance Orders are granted.

Officials believe that the degree of police support is an issue influencing the utilization of the *Act* and the *Criminal Code*; there is concern that police are not sufficiently informed, nor do they promote the use of the provisions of the *Family Violence Act*. Enforcement for breaches are dealt with under the offence and penalty section of the *Act* but, in the opinion of police, would be better handled by section 127 of the *Criminal Code*.

There is concern about the availability of legal representation for the applicant. The

Yukon Territory has not dealt with any court challenges to its *Act*. Justices of the Peace were given extra training in family violence, prior to the *Act*'s introduction, training that was arranged by the Chief Judge in order to enable them to perform their duties.

Alberta

Alberta proclaimed the *Protection Against Family Violence Act*[8] in June of 1999 following a public consultation process initiated in July of 1997 on the issue. The *Act* was evaluated on an interim basis and will be evaluated again at the end of three years. The legislation provides for:

- an Emergency Protection Order, which can be obtained by police on behalf of a victim and is available 24 hours a day through telephone access;
- a Queen's Bench Protection Order which provides longer-term protection and can remain in effect for up to a year; and
- a Warrant Permitting Entry which allows police to enter a home to search for and make sure a family member is safe, where there is a concern that a person who is unable to act on his/her own behalf is being subjected to family violence; police can assist a family member to leave the home if she/he consents.

Emergency Protection Orders are available through specially designated Justices of the Peace. This special designation requires that the Justice of the Peace be a trained lawyer with a minimum of five years at the Bar. Emergency Protection Orders are usually granted for about 90 days and must be heard within 7 days by the Court of Queen's Bench which can confirm, rescind, call a hearing or substitute its own order for up to a year. Emergency Protection Order conditions can include:

- exclusive occupation of the home to the victim;

- an order for no-contact with the victim or other person;
- restraint of a respondent from attending at a place normally attended by the victim or other family members;
- direction to police to remove an abuser;
- direction to police to assist victims to remove personal belongings;
- seizure and storage of weapons; and
- any other provision considered necessary for the immediate protection of the victim.

Free legal assistance is provided for a person seeking an Emergency Protection Order without any financial qualification. The victim must get an affidavit within 7 days at the nearest Legal Aid office or must give evidence on the phone at the time of application to the Justice of the Peace.

In addition to the provisions also available under the Emergency Protection Order, the Queen's Bench Protection Orders, obtained either during review of an Emergency Protection Order, or with legal assistance, by application to the Court of Queen's Bench, can:

- award costs for monetary losses suffered (loss of income or moving, legal, or accommodation expenses, etc.) or for damage to property;
- enable the Maintenance Enforcement Program to collect any awards owed;
- award temporary possession of the cheque book, vehicle or other assets;
- prohibit either party from taking, converting, or damaging property;
- prevent communication by the respondent with the victim, family members, employees, employers, or co-workers;
- require the respondent or any other family member to receive counseling;
- require the respondent to post a bond to secure compliance; and

- other provisions added by the Court.

Breaches are dealt with under Section 127 of the *Criminal Code* and while some breaches have been recorded, none have resulted in serious injury. Part of training for working with the legislation includes knowing how to determine whether to seek an order by asking whether there is a likelihood that the respondent would respect the order or, if not, whether police are located nearby and would be able to respond quickly.

The legislation appears to be working well and is not replacing criminal charges. To date, 244 victims have sought and been granted an Emergency Protection Order. The primary benefit is seen to be the ability of the victim and children to remain in their own home. Training is now being conducted with Child Protection workers on the use of the legislation in child abuse situations. Where a child has been abused and a parent is able to protect him or her, the Justice of the Peace can issue an order requiring the removal of the abusive parent.

Success Criteria

Criteria for success include the fact that:

- an interdepartmental committee developed and implemented the *Act* in collaboration with and with the support of two major Ministries;
- it was done in collaboration with the courts, police, and the community;
- training was done;
- an evaluative framework was developed in advance to ensure data needs were identified up front and measures were implemented to ensure its collection;
- ongoing technical meetings have been implemented since–to mobilize the community to develop partnership protocols among police, Legal Aid, Victims' Services, and Courts;

and

- education sessions were held on the *Act* and community planning.

No problems or court challenges have arisen to date and no amendments are planned.

The first of a three-phase evaluation of the *Act* was completed September 2000,[9] covering the 15 months since implementation, with the following results:

- 122 Emergency Protection Orders were confirmed, 17 varied by the Court of Queen's Bench, 54 were revoked, and 22 Queen's Bench Protection Orders were commenced in Court of Queen's Bench;
- 89% of Emergency Protection Orders requested were granted, 60% of which were confirmed or varied by the higher court; 30% were revoked, dropped or had expired;
- low utilization of Queen's Bench Protection Orders was attributed to police lacking knowledge of the order; instead, victims appear to be using applications for *ex parte* restraining orders (about 500 per year) from the Court of Queen's Bench;
- the rate of utilization of Emergency Protection Orders is low given the number of family violence incidents reported in police files, due to low overall awareness, police reluctance to apply for orders, and reluctance by Justices of the Peace to grant orders. Increased training and awareness campaigns were recommended; and
- some progress had been made in regard to increased awareness (largely through training in the dynamics of family violence), changes in attitude (less tolerance for family violence), and behavioural changes in terms of reduced family violence incidents (offering the opportunity for early intervention).

Improvements were suggested in the following areas:

- legislative – define "emergency;" make direct applications for Queen's Bench Protection Orders more accessible; broaden the definition of family to include foster children, same-sex couples, and caregivers who are not family members;
- process – such as to improve technology for telephone applications, minimize the length of time required to make applications, simplify paperwork, enforce a consistent approach to breaches, provide follow-up for victims and perpetrators, and other measures; and
- training – clarify how the legislation interacts with other legislation such as the *Criminal Code* (73% of the cases of Emergency Protection Order requests did not involve criminal

charges), the *Child Welfare Act*, and *Protection of Persons in Care Act*; and clarity that applications can be made for seriousness or urgency, etc.

One issue is the degree to which this legislation may be being used instead of criminal charges, particularly where victims do not wish charges laid.[10] The request to drop existing orders was extremely low (3 cases).

Perceived Benefits

The perceived benefits of the legislation are:

- immediacy and responsiveness;
- comprehensiveness of conditions, especially the exclusive occupation of the family residence; and
- enforcement (ability to charge on breach).

Manitoba

On January 1, 1993, amendments to Manitoba's *Family Maintenance Act*[11] came into force allowing spouses and co-habitants to apply, *ex parte*, to a Provincial Court Magistrate for a non-molestation order prohibiting one partner from annoying, molesting or harassing the other. Effective September of 1999, this measure was repealed and replaced by the *Domestic Violence and Stalking Prevention, Protection, and Compensation Act*, which was also a response to the Lavoie Inquiry, the Law Reform Commission on Stalking, and a review of experience with the *ex parte* orders. Unique to Manitoba is the inclusion of civil remedies for stalking.

The *Act* enables the granting of a Protection Order for an indefinite time period to be determined by the Justice of the Peace and a Prevention Order, intended to be for longer duration.

Included in the definition of cohabitants are persons who have resided together in a family (as well as spousal or intimate) relationship.

In addition to the usual "standard" provisions already described, the *Act* contains additional provisions for:

- suspension of drivers' license privileges and/or prohibition of renewal of the license where a motor vehicle has been used to further domestic violence or stalking; and
- weapons search and seizure (the regulations also detail measures respecting the disposition of assets and handling of weapons)

A tort of stalking is created under the *Act*, permitting the victim to sue her/his stalker, without proof of damages.

Manitoba's Protection Orders are not subject to automatic review by a Superior Court as they are in other jurisdictions. Instead, the order is registered with the Court of Queen's Bench and automatically has the force of any order from that court, becoming effective 20 days after service of the order. A reverse onus is placed on the respondent to apply within 20 days for the order to be rescinded and to show grounds as to why it should be set aside. Based on previous experience with *ex parte* orders, without this provision, the new legislation would have had a tremendous impact on court resources. While Legal Aid does cover civil matters, they generally will not represent either the respondent or the victim unless other family law issues are present.

More evidence is required up front; as a result, compared to Saskatchewan's *Act*, the duration of the order differs. The definition of "immediate" protection and the need for flexibility in interpretation were dealt with as a training issue in advance of implementation to avoid the difficulties with interpretation experienced in Saskatchewan.

The *Act* also includes provisions allowing the Court to adjourn proceedings with respect to variations and consent orders so that the victim can seek legal or other advice where the Judge is not satisfied that the victims's agreement is freely given, recognizing that victims are often pressured to agree to vary or revoke the order.

Training was carried out on a regional basis in two day formats with the first day including a basic explanation of the *Act* and the second day discussing the specific roles and responsibilities of those involved in the administration of the *Act*–police, the Bar, Court staff, and Justices of the Peace. Separate sessions were held with shelters.

There is currently a case before the courts in Manitoba challenging the ability of the province to use this section (*Criminal Code* s. 127) for enforcement. The case also charges that the Province is legislating in the area of criminal law which is outside its sphere of jurisdiction, making the legislation unconstitutional.

Critical Success Factors

The legislation is working from the point of view of utilization and the fact that it replaced a less effective, less immediate and more resource intensive legislative vehicle. At the end of the first year, of 1564 applications, 1111 orders had been granted–almost triple that of neighbouring Saskatchewan that has had legislation since 1995. This may be attributed to the fact that information was sent to shelters well in advance and that the province had some prior experience with non-molestation orders.

Critical success factors were identified as:

- the fact that training was conducted prior to the proclamation of the *Act;*
- the specific aspects of the legislation itself; and

- the establishment of a Working Group, including shelters, which took a collaborative approach to examining the issues and making recommendations.

Ontario

Ontario passed the *Domestic Violence Protection Act*[12] on December 17, 2000, with a likely proclamation date of the fall of 2001.

Similar to Manitoba, the Ontario *Act* covers assault (excluding self-defence); bodily harm; property damage; threats or acts that cause the victim to fear for his/her safety; forced confinement; sexual assault, exploitation, or molestation or the threat thereof; and stalking behaviors described as "a series of acts which collectively causes the victim to fear for his or her safety including following, contacting, communicating with, observing or recording any person."

Applicants can be a spouse/ex-spouse, same-sex partners or former partners, current or former co-habitants in a conjugal relationship, a person who is or was in a dating relationship with the respondent, or a relative of the respondent residing with the respondent.

Emergency Intervention Orders are available 24 hours daily through telephone access by police to a designated Judge or Justice of the Peace. An Emergency Intervention Order may include:

- restraint from attending at any place attended regularly by the applicant/relatives;
- restraint from conduct that is threatening, annoying, or harassing to the applicant;
- vacating the residence;
- accompaniment of the victim to remove belongings;
- no contact or communication;
- restraint from following the applicant from place to place, or being within a specific

distance; and

- seizure of weapons and documents authorizing ownership, possession, or control of a weapon.

An Intervention Order may include all the above provisions plus:

- granting exclusive possession of the residence, regardless of ownership;
- compensating the applicant for monetary losses suffered by the applicant or any child (loss of earnings or support, medical or dental expenses, out-of-pocket expenses for injuries sustained, moving and accommodation expenses, costs of application under the *Act*, including legal fees);
- granting the applicant or respondent temporary possession and exclusive use of specified personal property;
- restraining of the respondent from taking, converting, damaging, or dealing with property;
- requiring the respondent to attend specified counseling; and
- recommending that a child attend specified counseling at the respondent's expense.

The length of both orders are not limited by legislation and both are effective immediately upon being made, subject to notice having been given to the respondent. Breaches are enforced under Section 127 of the *Criminal Code*.

Either party can apply to the court for a hearing to vary or terminate an Emergency Intervention Order within 30 days of receipt of the order by the respondent. If a request for a hearing is not made, a Judge of the Court shall review the Emergency Intervention Order and either confirm it or order a hearing, at which point it can confirm, vary, or terminate the order. If the order is varied, it becomes an Intervention Order. A training plan is under development.

Endnotes

1. S.S. 1994, c. V-6.02 (proclaimed February 1999).

2. Canada, Minister of Justice, *Review of the Saskatchewan Victims of Domestic Violence Act*, by Prairie Research Associates (Ottawa: Department of Justice Canada, Research and Statistics Directorate, 1996).

3. *A Further Review of the Saskatchewan Victims of Domestic violence Act* by Prairie Research Associates (Ottawa: Department of Justice Canada, Research and Statistics Directorate, 1999).

4. S.P.E.I. 1996, c. V-3.2

5. *A.L.G.C. v. Prince Edward Island*, [1998] P.E.I.J. No. 15 (S.C.T.D.), online: QL (PEIJ).

6. B. Bradford, *Final Report: Victims of Family Violence Act Monitoring* (Charlottetown, Prince Edward Island: 1998).

7. S.Y. 1997.

8. S.A. 1999, c. P-19.2.

9. Howard Research, *Implementation and Impact of the Protection Against Family Violence Act: Final Report* (Edmonton, Alberta, 2000).

10. *Ibid., at 16.*

11. S.M. 1988, c. D93.

12. S.O. 2000, c. 33.

APPENDIX G

Review of the Framework for Action Against Family Violence

Submission of the Nova Scotia Public Prosecution Service

to

Dean Dawn Russell
Dalhousie Law School

March, 2001

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Appendix

Preamble

In the spring of 1995, the provincial Minister of Justice established a Family Violence Action Committee to provide direction and advice to the Department of Justice in the development of a comprehensive strategy to improve the response of the justice system to family violence. As a result, in September 1995 the provincial government announced the implementation of the *Framework for Action Against Family Violence*. In early1996, the *Directive of the Minister of Justice on Spousal/Partner Violence* [March 28, 1996 (copy attached)] was issued with the stated objective of ensuring the implementation of a "pro-arrest, pro-charge, pro-prosecution" policy.

In 2000, the government commissioned Dean Dawn Russell of Dalhousie Law School to review the *Framework for Action* and to report on her findings. This brief on behalf of the Public Prosecution Service was prepared by a nine-member committee of Crown attorneys in response to Dean Russell's request for submissions by interested agencies. These Crown attorneys include:

Darrell Carmichael, Senior Crown Attorney (Western Region)
Peter Craig, Senior Crown Attorney (Halifax Region)
Christine Driscoll, Crown Attorney (Halifax Region)
Ronald J. MacDonald, Senior Crown Attorney (Central Region)
Shauna MacDonald, Crown Attorney (Halifax Region)
Susan MacKay, Crown Attorney (Halifax Region)
D'Arcy MacPherson, Crown Attorney (Cape Breton Region)
M. Alanna Murphy, Chief Crown Attorney (Halifax Region)
Adrian C. Reid, Q.C., Chief Crown Attorney (Halifax Region) - Committee Chair

Introduction

The *Framework for Action Against Family Violence* has not only changed the way the justice system responds to family violence, it has changed societal attitudes toward it as well. There has been a remarkable change for the better in only five years.

Within the Public Prosecution Service, training has enhanced understanding and a practice directive has led to better and more consistent handling of family violence cases. Communication and co-operation between the Public Prosecution Service and other components of the justice system has improved markedly.

The number of cases of family violence which are being prosecuted has increased substantially since 1995 but, and perhaps accordingly, the level of seriousness of the "average" case appears to have declined. This suggests a lower tolerance for family violence in society generally. Crown attorneys feel that, in contrast to a few years ago, more offenders now see their conduct as having been criminally wrong.

There are a number of ways in which the justice system could have done better, however.

The goal of reducing the delay in getting family violence cases through the justice system has not been achieved. There are some difficulties in reconciling government policy on the proper exercise of prosecutorial discretion with the government policy regarding domestic violence. The Public Prosecution Service's internal directive on family violence [*Spousal/Partner Violence Policy*, June 7, 1996 (copy attached)] needs revision in the light of our experience in dealing with spousal/partner violence cases. This has probably led to well-intentioned but inconsistent interpretations of the policy.

The Public Prosecution Service, like all components of the justice system, must be accountable for its response to family violence. Crown attorneys must be held accountable for the manner in which they give effect to government and Public Prosecution Service directives in this important area. Accountability measures are important not only to ensure compliance with specific directives but to point the way to needed changes in those directives and to motivate compliance with directives generally. While there has been an audit within the Public Prosecution Service regarding family violence cases, the process is not yet complete. Data-gathering is finished, however the methodology used has been criticized. Additionally, analysis and consultation with Crown attorneys have yet to be done. Therefore, more than five years into the Framework, the audit process within the Public Prosecution Service has not been completed.

Since the *Framework* was created there has been a realization that an alternative resolution process may be an effective option to the formal justice system in some situations. Many Crown attorneys see an alternative resolution process as a more constructive way of dealing with some cases of spousal/partner violence. They would like to see a carefully controlled trial of selected family violence cases in an alternative resolution program similar to the restorative justice program to see what it may offer. That would require a step away from the pro-charge, pro-prosecution policy for every case to a more flexible policy which would emphasize the importance of repairing the harm done to people who choose to continue their relationship in the aftermath of family violence.

The following parts of this submission deal with specific areas of concern to Crown attorneys.

Alternative Resolutions

Crown attorneys recognize that domestic violence is a serious problem in our society and we support the objective of a "swift and effective" response by the justice system to reports of spousal or partner violence. The need for this type of response was identified in the preamble to the *Directive of the Minister of Justice on Spousal/Partner Violence* of March, 1996.

The current policy directives ensure that a criminal act of spousal or partner violence, once identified, is dealt with through the criminal justice system. This is the essential first step in addressing the problem. Taking this step acknowledges that society has an interest in protecting the right of parties involved in an intimate relationship to be free from violence and the threat of violence within that relationship as well as an interest in protecting others, particularly children, who are affected by the nature of that relationship. This has been a fundamental and positive public policy shift as domestic violence can no longer be seen as a "private" matter. Both offenders and, sadly, their victims often rationalize the assaultive or threatening behaviour. The process must start with a criminal charge being laid. Therefore the alleged conduct is identified and denounced as criminal. This, coupled with the resolve to make the offender accountable for that conduct, is crucial.

Crown attorneys, however, are concerned that the ends of justice can be frustrated by a subsequent inability of the current policy to respond to some of the specific concerns and needs that arise in domestic violence cases. Unfortunately, our experience is that too often the response of the justice system to this serious and pervasive problem is neither effective nor swift. Having no option but the traditional model of the courtroom prosecution of all cases of domestic violence too frequently can lead to failed prosecutions. We view the ability to divert appropriate cases to an alternative resolution process as a positive step which would encourage offenders to accept responsibility for their criminal behaviour and to change it, and to do so at an early point in the process.

The current provincial restorative justice program and its underlying rationale is set out in the publication *"Restorative Justice: A Program for Nova Scotia"* [Nova Scotia Department of Justice, June 1998 (copy enclosed)]. We believe that an alternative resolution model, similar in many ways to the current restorative justice model, in some instances of domestic violence could provide an effective means of holding offenders accountable for their crimes. It would do so in a holistic context which would better address the underlying issues surrounding the commission of these offences. This approach should lead to these cases being dealt with more effectively and quickly. We also believe that such an approach would increase victim satisfaction with the justice system's response to the problem of spousal/partner violence.

We nonetheless are aware that where significant power imbalances between the victim and the offender are present, it may be inappropriate to use this alternative approach. Victims of spousal/partner violence may be particularly vulnerable to being coerced into giving their consent to participate in the process. Crown attorneys and other participants in the process therefore must be aware of and sensitive to such complex issues as, for example:

a) significant power imbalances between the victim and the offender;
b) the vulnerability of victims to coercion;
c) the tendency of victims to inappropriately blame themselves for the offender's conduct; and
d) the "honeymoon phase" of the domestic violence cycle, where the offender seeks and obtains the forgiveness of the victim. (In other types of crimes this may be a sign of a healing of the relationship between victim and offender, but in domestic abuse cases it is often an indication that the cycle of violence will continue.)

We believe that these concerns must be addressed through both the referral screening process and the delivery of the program.

When properly understood and administered, we believe that this alternative approach will lead to a significant improvement in how the criminal justice system addresses spousal/partner violence in some cases.

Proposed Criteria for Referral of Spousal/Partner Violence Cases to Alternative Resolution Program

Not every offender would be offered the ability to participate in an alternative resolution program. We propose that initial prerequisites before referral would be considered be as follows:

1) the offender has no prior convictions or discharges for offences of violence or threats;
2) no criminal convictions of any kind for the preceding five years;
3) no outstanding criminal charges;
4) no bodily harm was inflicted during the course of the offence; and
5) no prior referrals to an alternative resolution program for a spousal/partner offence.

Additionally, the following minimum requirements would have to be met:

1) the victim, having been given access to independent professional counselling, and being informed about the program, is willing to participate in it;
2) referral is consistent with the protection of society;
3) the offender accepts responsibility for his or her actions;
4) the offender has been informed about the program and consents freely and fully to participation in it, having been given a reasonable opportunity to consult counsel;
5) there is sufficient evidence to proceed with the prosecution of the offence; and
6) prosecution of the offence is not barred by law.

Discretionary factors which would be considered once all the preceding conditions were met would include the following:

1) the offender is cooperative;
2) there is a community need for a restorative result in this case;
3) the motive behind the commission of the offence has been considered;
4) the seriousness of the offence, the level of participation of the offender and the level of deliberation prior to the offence have been considered;
5) the relationship between the victim and the offender prior to the offence and the potential for a continued ongoing relationship have been considered;
6) there is an apparent ability for the offender to learn from a restorative experience and follow through with an agreement;

7) there is potential for an agreement that would be meaningful to the victim;
8) the harm done to the victim has been considered;
9) whether a government or Public Prosecution Service policy conflicts with this referral; and
10) factors pertaining to the offence, offender, victim, and the community which may be deemed to be exceptional have been considered.

New information may come to light after a referral has been made. Expert assessment may reveal other factors not previously apparent. Given the factors to be considered, we recommend that referrals should be made by Crown attorneys. Once a referral has been made the head administrator of the program should be able to request that the Public Prosecution Service reconsider a recommendation.

We realize that in order for an alternative resolution program to work there would need to be a commitment made by the Public Prosecution Service to provide ongoing education and training for Crown attorneys in regard to issues concerning domestic violence. This would ensure that their decisions made with regard to referrals to the program would reflect a well-informed awareness of the dynamics of domestic abuse cases.

Why Do Prosecutions of Spousal/Partner Violence Cases Sometimes Fail?

There are a variety of reasons, many of which have nothing to do with the legal merits of a case, why spousal violence prosecutions fail.

Historically, aggrieved individuals had the responsibility for the prosecution of alleged crimes committed against them. They were active participants in seeking justice for themselves. Over time, the conduct of prosecutions was taken over by the state, as crime became seen as an offence against the state. While this change would have had the obvious benefit to many victims of allowing greater access to the justice system, it also has had the effect of relegating them to the sidelines of criminal prosecutions. Their participation in the process by and large has been as witnesses who describe what happened to them. Victims have felt, and justifiably so in many instances, that their underlying concerns surrounding the impact of the crime upon them have not been considered a central issue in the prosecution process: they have not felt that they have been "heard".

Regrettably, the manner in which we currently deal with spousal/partner violence cases in some instances seems to reinforce the belief of some victims that their wishes do not matter. This is particularly unfortunate when considering that victims of domestic violence also often feel this way as a result of the abuse they have suffered at the hands of their intimate partner. Victims not infrequently express the view to us that they feel revictimized by the prosecution process, and we receive many requests from them to "drop the charges". It is our experience that many complainants in spousal/partner violence cases do not wish to testify. Many Crown attorneys believe on the basis of their experience that the current policy may actually discourage the reporting of incidents of domestic violence. It is possible that potential complainants are aware of what they perceive to be negative consequences to themselves of reporting a complaint of domestic abuse to police.

When confronted with having to testify, some victims begin to perceive the prosecutor as the enemy. The result may be recantation, contempt for the court process, or perjury. The end result is often an acquittal. With an acquittal, the opportunity is lost for the offender to benefit from the imposition of counselling and other corrective measures which are obviously needed. Also, complainants who have recanted in the past may feel that this recantation has disentitled them to belief in future matters. In some cases this perception may be accurate, as their recantations may well be brought up during hearings on any new matters in which they are complainants as a way of attacking their credibility.

Victims often do not co-operate with the prosecution, for a variety of reasons. Frequently in some areas they do not attend trial, even though under subpoena. Crown attorneys are then left with the option of requesting a warrant for the arrest of the complainant/victim, which sometimes is the only option open to the Crown if the prosecution is to be continued. Examples of some of the reasons given by complainants for not wanting the prosecution to continue include the following:

- "I just wanted the police to get him out of there that night, I didn't want him charged."
- "I'm sure nothing like that will ever happen again – nothing like it's ever happened before."
- "He promised he'd stop drinking, and he will."
- "I don't want my kids' father to go to jail."
- "It was really my fault. He wouldn't have been so angry with me if I hadn't said those things to him."
- "I just want him to get some help with his drinking problem."
- "I just want him to go and get some counselling to help him deal with his anger. He's had a hard life, you know."
- "Now that I've had some time to think about it, I realize that he didn't push me down the steps. I slipped and fell during the argument. He must have been reaching to catch me."
- "I was on drugs. I don't remember that night. I don't even remember making that statement to the police."
- "I hit him first. He was just defending himself."
- "He'll lose his job if he gets convicted, and then where will the kids and I be?"
- "He's a trucker and he goes to the States. If he's found guilty, he won't be able to cross the border."
- "We're back together again now. Things are fine. I don't want him prosecuted."
- "Where we come from, it's okay for a man to do that to his wife. Now that he knows that it's not okay, it won't happen again. I don't want him to be deported."
- "Listen, this is pretty embarrassing for me. I don't want people to know that my

girlfriend did this to me."
"We're trying to adopt a child. This will make it harder."

Sometimes complainants refuse to cooperate because they fear reprisal from the accused, or someone acting on the accused's behalf. It is especially important of course, for obvious reasons, that prosecutions be conducted in these types of cases and that police be encouraged to consider laying charges for obstructing or attempting to obstruct justice where appropriate.

Not infrequently, by the time a trial date is set complainants cannot be located in order to notify them of the trial date and serve them with a subpoena. In many cases neither the police nor the Crown attorney has information enabling them to be located.

The defence often takes a "wait and see" approach to domestic violence cases. As a defence strategy, they wait until the day of trial to see whether the complainant appears and is willing to testify before deciding to plead guilty. There seems to be little difference between sentences imposed on offenders who plead guilty at an early date and those who plead guilty on the date of trial. Accordingly there is little incentive for a defendant to enter an early guilty plea.

Crown attorneys also are concerned that some members of the judiciary may be becoming desensitized to the serious nature of domestic violence. This may be a result of the significant number of these cases which involve allegations on the lower end of the scale of physical violence.

Delay

Delay is a significant problem in the prosecution of spousal/partner violence cases, and is a major contributing factor in the failure of some of these types of prosecutions. For the most part, spousal/partner violence cases are not "fast-tracked" through the justice system unless the accused has been remanded into custody pending the resolution of the case, which is not the norm. Often the offender and the victim reconcile within a very short period of time after the commission of the offence, perhaps days or even hours. The impact of the assaultive event on the victim fades from memory, and victims simply do not see why they should be forced to testify about what happened when they no longer feel affected by it. While a trial date is pending the offender may well be careful not to upset the complainant, which also may weaken the complainant's will to testify.

From the time the incident occurs and the alleged offender is arrested until the matter is first arraigned in court it can be upwards of six weeks (unless the person has been detained in custody). Most accused parties do not retain a lawyer before their first court appearance. Many then request an adjournment to seek counsel. A subsequent delay of up to three months to get an appointment is usual if they retain the services of Nova Scotia Legal Aid, which is commonly the case. Once counsel is retained further adjournments before plea is made are not uncommon. The setting down of trial may not occur until as much as five months after the incident occurred.

Once a plea is entered delays range from three to twelve months before the trial occurs. Delays between the time of the incident and the time of trial can easily be between eight months to well over a year. If the case is adjourned for any reason, the length of the delay can easily double. This often happens. If found guilty and a pre-sentence report is requested from Probation Services about two months will be required for this to be prepared before sentencing occurs. Even if no pre-sentence report is ordered there still may be a delay in order to obtain a victim impact statement.

We recommend that spousal/partner violence cases be arraigned within two weeks of the incident date, and that trials be held within six weeks of the incident date. This has obvious resource implications, which will be discussed below.

Cross-charging

Cross-charging occurs when both parties to an incident of spousal/partner violence are charged by the police. Typically this arises when two police investigators attend a scene and each officer interviews one of the parties. These situations pose unique procedural and evidentiary concerns.

Procedurally, it is imperative that Crown attorneys be aware of the existence of a "cross-charge". This can be achieved through appropriate flagging on the Crown Summary. Such notification to Crown attorneys has been a particular problem in the Halifax region, however the Halifax Regional Police have undertaken to ensure that their process of disclosure will include a flagging mechanism.

As cross-charging generally emanates from a single incident, evidence relating to one charge is necessarily relevant to the other. This requires that all information be disclosed in both Crown files in order that an appropriate assessment as to the likelihood of conviction can be made.

Cross-charging often leads to an untenable situation for Crown attorneys: how can the Crown present a witness one day as credible, and then attack the same person as unworthy of belief when that witness presents the same version of events when appearing as a defendant in the "other" case?

As these type of cases often involve a "he said, she said" situation with little, if any, other information available, they pose inherent difficulties, requiring a need for: 1) as thorough an investigation as possible, and 2) a realization that if an officer does not know which party's version of events the officer believes, then there may well be insufficient grounds to support the laying of a charge. If police do not believe, on reasonable grounds, that an offence was committed, they have a responsibility not to lay charges. It seems that police officers sometimes interpret the "pro-arrest, pro-prosecution" policy as one which leaves them with no option but to remove an alleged offender from a residence and charge him or her. This situation has the potential to give rise to claims of false arrest and malicious prosecution.

The police in some instances seem to be between a rock and a hard place. They are well aware that if they were not to intervene to remove a party because their investigation did not reveal reasonable grounds to believe an offence was committed by that party and subsequently the party injured or killed his or her intimate partner, then the police could well be perceived as having been derelict in their duty to protect the public. Their motivation, therefore, seems to be to err on the side of caution for the sake of the parties' physical safety.

While as Crown attorneys we appreciate the inherent evidentiary difficulties that some domestic violence cases can present to police, they must always ensure that reasonable grounds exist to believe an offence was committed before a public prosecution is begun. The decision whether or not to charge rests with the police. Crown attorneys, if asked, will give a legal opinion regarding the information police have gathered. Seeking this legal advice from Crown attorneys may be helpful in difficult cases.

Crown Discretion: the Interpretation of the A-G's Directive and PPS Policy

Crown attorneys would like to have input into the development of the Attorney-General's policy on spousal/partner violence. This would help ensure that the Attorney-General's policy goals are effectively met. The front-line Crown attorneys who routinely administer the current policies could offer valuable insight which would be a boon to the policy development/revision and coordination process. Crown attorneys deal with the implementation of this policy on a day-to-day basis. They routinely deal with judges, police, defence counsel, complainants/victims, victims' families, witnesses, court staff, probation officers, victims' services workers, medical and other professionals, and members of the general public. Crown attorneys are uniquely situated within the justice system to comment on the results of many criminal justice policy initiatives, including this one, and to offer constructive and practical suggestions for policy revision and reform.

Resourcing

Substantial additional resources must be directed to the following areas:

Police:

- Training regarding domestic violence
- Use of polaroid and video cameras in domestic violence investigations
- Increased use of K.G.B. statements [R. v. B.(K.G.), [1993] 2 S.C.R. 740, 79 C.C.C. (3d) 257, 19 C.R.(4th) 1)

Victims' Services:

- More victims' services workers to ensure the involvement of Victims' Services with the victim beginning at the time of the incident and

continuing consistently throughout the process
- Training for Victims' Services workers

Courts:

- Courts exclusively dedicated to dealing with domestic violence cases
- Training for judges

Nova Scotia Legal Aid:

- Resourcing to allow and require Nova Scotia Legal Aid to provide immediate representation within the timelines proposed in these recommendations to qualified applicants charged with spousal/partner offences

Nova Scotia Public Prosecution Service:

- Proper implementation of these recommendations would involve providing training and education for Crown attorneys, and more Crown attorneys

Alternative Resolution Program:

- This process will require adequate staffing within a well-structured organization

An effective response to the serious problem of domestic violence requires that government commit the necessary resources to enable policy objectives to be met.

* * * * *

Conclusions

While Crown attorneys support the objective of a swift and effective response by the justice system to reports of spousal/partner violence, we believe this objective is not currently being met in all cases. The "pro-arrest, pro-prosecution" policy of the *Framework for Action Against Family Violence*, as it has been implemented, has led to more charges being laid. We do not conclude, however, that the ultimate goal of reducing family violence has been met. The requirement to prosecute all such matters through the court system has meant that in some cases opportunities may have been lost to effectively get to the root of the problem of domestic violence. We believe that using an alternative resolution process could be a more effective means of prosecuting – in the broad sense of that word – some cases of domestic violence. Such a process would encourage timely acceptance of responsibility by offenders, and hold them accountable for their actions in a way that is meaningful to them and to their victims. It also would address what we perceive to be a disturbing lack of confidence of some victims of spousal/partner violence in the ability of the criminal justice system to address their concerns and interests.

Crown attorneys also believe that there is a need for ongoing consultation regarding policy matters between government officials who create policy and the front-line Crown attorneys who administer it. We believe such a broad-based consultation process would maximize the effectiveness of policies which aim to reduce domestic violence in our province.

Success in dealing with the problem of domestic violence also will depend upon increased resources being deployed by government.

Respectfully submitted,

Martin E. Herschorn, Q.C.
Acting Director of Public Prosecutions
Nova Scotia Public Prosecution Service

Review of the Framework for Action Against Family Violence

Submission of the Nova Scotia Public Prosecution Service

to

Dean Dawn Russell
Dalhousie Law School

March, 2001

APPENDIX

CONTENTS

Directive of the Minister of Justice on Spousal/Partner Violence
(March 28, 1996)

N.S. Public Prosecution Service Spousal/Partner Violence Policy
(June 7, 1996)

[*separate attachment*]
Restorative Justice: A Program for Nova Scotia
(N.S. Department of Justice: June, 1998)

DIRECTIVE OF THE MINISTER OF JUSTICE

ON SPOUSAL/PARTNER VIOLENCE

The Framework for Action Against Family Violence represents Government's commitment to improve the response of the justice system to this serious social problem. It is in the public interest that the justice system responds swiftly and effectively to reports of spousal/partner violence. Accordingly, the Minister of Justice issues the following Directive to ensure the implementation of a pro-arrest, pro-charge, pro-prosecution policy.

Application:
Spousal/partner violence refers to all forms of violence or threats of violence between current or former spouses or partners in a relationship, whether it be a marriage, common-law or dating relationship. It can include physical, emotional and economic threats, including threats to children, pets, property, stalking, harassment and every other form of violence.

1. The police are to respond to and fully investigate all complaints of spousal/partner violence. The parties are to be interviewed separately. Written and signed statements should be obtained from the victim/complainant and witnesses as soon as practicable. Comprehensive evidence (eg. photographs, diagrams, witness accounts) shall be gathered to reduce reliance on victim testimony.

2. Police shall ascertain the presence of weapons and determine whether seizure of weapons is warranted.

3. The alleged assailant shall be arrested immediately in all cases where the police officer has reason to believe that there will be a continuation or repetition of the offence (including a violation of a 'no contact' order, peace bond, civil restraining order or release condition) or if other grounds for arrest are present. Where the police officer releases the alleged assailant on an undertaking (Form 11.1), that undertaking shall contain a 'no contact' and other protective conditions appropriate to the circumstances.

4. The police officer shall lay a charge where there are reasonable and probable grounds to believe that an offence has been committed. The police officer's decision to lay charges will depend upon the evidence available and not upon the wishes of the victim/complainant. Where the police officer lays a charge, the officer is to inform both the victim/complainant and the accused that the victim/complainant cannot withdraw the charge. The withdrawal of charges is the sole responsibility of the Crown Attorney.

5. Safety of the victim is of paramount concern. Where charges are, or will be, laid pursuant to an incident of spousal/partner violence, police shall notify the appropriate victim support service by the most expedient method at the earliest opportunity. If the police officer believes that children in the home are in danger of physical or emotional

abuse, the officer shall notify Children and Family Services. If required, safe transportation of the victim to a transition house or secure residence shall be provided or arranged by the investigating police officer. Victims shall be kept informed regarding the progress of the case, including information regarding release conditions and sentencing provisions.

6. Police are to consult the Crown Attorney at the earliest possible stage with respect to the prosecution of the charge. A police officer is to provide advice to the Crown Attorney regarding continued custody or conditions of bail upon the first appearance of the accused.

7. In appropriate circumstances, a court may order a peace bond. The violation of a peace bond is a criminal offence. Where a person bound by a peace bond violates the term of the peace bond, police are to treat such violation in the same manner as a breach of a term of bail.

8. Court staff shall give priority to cases of spousal/partner violence. Court staff shall ensure that orders of the court are prepared and distributed to appropriate persons (i.e. victim, police, Victims' Services, accused, etc.) as soon as possible.

9. Where the Crown Attorney prosecutes cases arising from incidents of spousal/partner violence, the matters will be heard in the Provincial Court. A peace bond application and charges under Section 266(b) of the Criminal Code in relation to an assault between a husband and wife may be heard in Family Court when it is heard in conjunction with other matters before the Family Court involving the same parties. The definition of husband and wife in the Family Court Act includes persons living together as husband and wife for a period of at least one year.

10. The Crown Attorney should make every reasonable effort to obtain an early court date for all matters involving spousal/partner violence.

11. Crown Attorneys will prosecute a spousal/partner violence charge whenever they are satisfied that sufficient evidence exists regardless of the victim's/complainant's wishes, unless public interest considerations dictate otherwise. The Crown shall provide an opportunity to the complainant/victim and other witnesses to meet with the Crown Attorney prior to the trial. The Crown Attorney shall refer the complainant/victim to the Victims' Services Division of the Department of Justice.

12. The Crown Attorney shall request a 'no contact' or other protective order in all appropriate cases where there is an application for judicial interim release. The Crown Attorney shall prosecute without delay all violations of court orders intended to ensure the safety of the complainant/victim.

13. The impact of a crime on a complainant/victim is a relevant and important sentencing consideration. Unless the Crown Attorney is aware that it has already been done, the Crown Attorney should inform the complainant/victim of their right to submit a victim

impact statement to the court.

14. Where a victim/complainant appears at the court for the purpose of commencing a private prosecution, court staff should determine whether the victim/complainant has consulted with the police. If no consultation has occurred, the complainant should be referred to the police. However, if the complainant then or later wishes to proceed with a private prosecution, court staff should deal with the matter according to law. Nothing in this Directive shall be interpreted as limiting the right of a person to commence a private prosecution.

William Gillis
Minister of Justice

Halifax, Nova Scotia
March 28, 1996

file ref. f:\wp51\crim-law\spou-vic.01

INTRODUCTION

This policy is intended to amplify and support the pro-arrest, pro-charge, and pro-prosecution Directive of the Minister of Justice Regarding Spousal/Partner Violence. Crown Attorneys shall follow this policy together with the Directive of the Minister of Justice Regarding Spousal/Partner Violence which is attached hereto as Appendix "A".

It is in the public interest that victims of spousal/partner assault receive efficient, effective and equitable treatment in the justice system. The purpose of this statement of policy and procedure is to assist Crown Attorneys with their responsibilities when dealing with spousal/partner assault prosecutions. The Public Prosecution Service recognizes the need for a community based multi-disciplinary response to spousal/partner violence and hopes that this policy will aid in the development of local protocols.

POLICY

For the purpose of this policy statement, spousal/partner violence refers to all forms of violence or abusive behaviour, between persons who are or have been legally married, who are or have been in a common law relationship or who are or have been dating. Spousal/partner violence includes sexual and physical assault, threats of violence and criminal harassment.

This policy statement recognizes the unique, volatile and emotionally charged nature of spousal/partner violence. Crown Attorneys should give these offences a high priority in recognition of their serious nature and the destructive effect of the cycle of violence.

I. Arraignment

1.0 Where the accused is brought to Court in custody, the Crown Attorney should:

(a) in appropriate cases, make representations in support of a request that the accused not be released on bail;

(b) in cases other than those described by paragraph (a), make representations in support of a request that the accused, while on bail be subject to appropriate conditions including a "no contact" provision.

1.1 In situation 1.0 (a) above, the Crown Attorney should consider the advice of the police officer and shall consider the information provided by the officer in respect to the following when making representations in support of a request the accused not be released on bail:

(a) the history of violence or threats of violence by the accused against the complainant/victim;

(b) the history of violence or threats of violence by the accused against others;

(c) the nature of the threat or assault;

(d) the presence, use or threat of use of weapons;

(e) the involvement of alcohol or drugs;

(f) the apparent mental health status of the accused;

(g) the presence of children during the alleged offence;

(h) the concerns of the complainant/victim; and

(i) the criminal record of the accused.

1.2 In situation 1.0 (b) above the Crown Attorney should consider the advice of the police officer and shall consider the information provided by the officer in respect of the following when making representations in support of a request that the accused while on bail be subject to conditions:

(a) the history of violence or threats of violence by the accused against the complainant/victim;

(b) the history of violence or threats of violence by the accused against others;

(c) the nature of the threat or assault;

(d) the presence, use or threat of use of weapons;

(e) the involvement of alcohol or drugs;

(f) the apparent mental health status of the accused;

(g) the presence of children during the alleged offence;

(h) the concerns of the complainant/victim; and

(i) the criminal record of the accused.

2.0 The Crown Attorney should make all reasonable efforts to obtain an early court date for all cases involving spousal/partner violence.

3.0 Where the accused is released on bail by the Court at arraignment, the Crown Attorney should:

(a) as soon as practicable inform the investigating police force that there are conditions of release and advise that they should forthwith inform the complainant/victim of the conditions of release and that they should provide the complainant/victim with a copy of the release order as soon as possible; or

(b) as soon as practicable inform the Victims' Services Officer and request that they forthwith inform the complainant/victim of the conditions of release and that they should provide the complainant/victim with a copy of the release order as soon as possible; or

(c) as soon as practicable inform the complainant/victim of the terms of release and provide the complainant/victim a copy of the release order as soon as possible.

4.0 The Crown Attorney shall prosecute cases of spousal/partner violence in accordance with the Directive of the Director of Public Prosecutions regarding the exercise of prosecutorial discretion attached as Appendix "B". Applications for judicial interim release shall include a request for a "no contact" or other protective order in all appropriate cases. This request should state that there be no contact directly or indirectly with the complainant/victim unless the contact is initiated by the complainant/victim. For breaches of such orders, a request should be made to revoke bail and detain the accused in custody using the reverse onus provisions of the Criminal Code.

4.1 Where a complainant/victim initiates a request to vary a "no contact" condition the Crown Attorney before agreeing to any variation should consider all the circumstances of the request and where, in the discretion of the Crown Attorney, it is necessary in the interest of justice the Crown Attorney should facilitate the placing of the undertaking or recognizance on the court docket where upon the complainant/victim should describe under oath all of the circumstances of the request.

5.0 The Crown Attorney shall prosecute without delay all violations of court orders intended to ensure the safety of the complainant/victims of spousal/partner violence.

II. Trial

1.0 Wherever the Crown Attorney is satisfied that a reasonable chance of conviction exists in a spousal/partner violence case the Crown Attorney shall pursue the prosecution of charges unless public interest considerations dictate otherwise.

1.1 The decision not to carry on with a prosecution is the responsibility of the Crown Attorney. Prior to coming to such a decision, the Crown Attorney should consult with the investigating police officer and wherever possible, should consult with the Regional Crown Attorney, the Associate Regional Crown Attorney, or his delegate for their region. A decision to discontinue the prosecution shall be reported to the Deputy Director of Public Prosecutions by the Crown Attorney. Where a decision is made not to continue a prosecution for public interest considerations, those reasons will be stated in open Court unless it is inappropriate to do so. In all cases the reasons for discontinuance will be recorded in the Crown file.

1.2 There are a number of opportunities the Crown Attorney can take to interview the complainant/victim both before and after the arraignment but in any case, the Crown shall provide an opportunity to the complainant/victim and other witnesses to meet with the Crown Attorney prior to the trial.

1.3 The Crown Attorney shall refer the complainant/victim to the Victims' Services Division of the Department of Justice.

Procedure Upon Recantation of the Complainant/Victim:

1.4 The concerns of the complainant/victim are a proper public interest consideration. However, because of the societal interest in addressing the problem of spousal/partner violence, this factor alone is not a sufficient basis upon which to discontinue a prosecution.

1.5 When faced with a complainant/victim recantation that factor alone is not sufficient to discontinue a prosecution. The Crown Attorney in those circumstances should consider the following:

(a) conducting inquiries or requesting the police conduct inquiries into the background of the recantation to determine its cause;

(b) meeting with the complainant/victim and advising of support services which might assist during the court process;

(c) instructing the police to take a statement from the complainant/victim concerning the recantation.

(d) assessing the strength of the Crown's case and likelihood of conviction in light of the recantation with particular attention to the S.C.C. decision in *R. v. K.G.B.* (1993), 79 C.C.C. (3d) 257; The use of this decision in appropriate cases will allow the Crown Attorney to use the complainant/victim original statement to police as evidence in court;

(e) the Crown Attorney should when a complainant/victim recants on the witness stand, in appropriate cases invoke the provisions of section 9 (2) of the Canada Evidence Act;

2.0 The complainant/victim's testimony should be supported to the extent possible through the use of other evidence.

3.0 Where a complainant/victim fails to appear in Court in response to a subpoena, the Crown Attorney should take such steps, as in the opinion of the Crown Attorney, are necessary to ensure that the Crown retains control and appears to retain control over the prosecution. It is of paramount importance that no one, (in particular neither the complainant\victim nor the accused) perceives that the criminal process can be frustrated by the complainant\victim failing to respond to a subpoena. Where the complainant\victim fails to respond to a subpoena, the Crown Attorney should consider the following options:

(a) requesting an adjournment;

(b) requesting a Warrant and, where appropriate, requesting that it be held for sufficient time to determine the reason the complainant\victim failed to appear. Obtaining a Warrant is not intended to punish the complainant/victim for being reluctant to testify, but rather as a means of keeping the prosecution alive in the hope of protecting the complainant/victim in the short and long terms;

(c) requesting the authority to enter a stay of proceedings;

(d) offering no evidence. Since the decision to offer no evidence amounts to a discontinuation of the prosecution, this decision should be made in accordance with the principles set out in 1.0 and 1.1 above.

III. Sentencing

1.0 The impact of a crime on a complainant/victim is a relevant and important sentencing consideration.

2.0 Unless the Crown Attorney is aware that it has already been done, the Crown Attorney should inform the complainant/victim or request the investigating police force inform the complainant/victim that information regarding the impact of the crime on the complainant/victim provided to the police or the Crown Attorney may be submitted to the Court by the Crown Attorney.

3.0 Prior to speaking to sentence, the Crown Attorney shall consider the concerns of the complainant/victim on sentencing and where possible, advise the complainant/victim of the Crown Attorney's proposed recommendation.

4.0 Where the Crown Attorney is seeking a term of incarceration, the Crown Attorney, should consider asking the sentencing Judge to endorse the Warrant of Committal with a recommendation that the offender receive treatment while incarcerated.

5.0 Where the Crown Attorney is seeking a term of incarceration of two years,or less the Crown Attorney should consider recommending that a period of probation with appropriate conditions* be imposed in addition to the period of incarceration.

6.0 Where firearms have been used in the commission of the offence, the Crown Attorney should seek a firearms prohibition order or forfeiture of the weapons pursuant to the provisions of the Criminal Code.

7.0 Where the Crown Attorney is not seeking a term of incarceration the Crown Attorney should consider recommending a period of probation with appropriate conditions.*

8.0 The Crown Attorney after the sentence hearing should:

(a) as soon as practicable: (i) inform the investigating police force of the sentence, (ii) advise that the investigating officer should forthwith inform the victim of the sentence and (iii) where probation is imposed request that the investigating officer provide the victim with a copy of the probation order and the name and number of the probation office; or

(b) as soon as practicable: (i) inform the Victims' Services Officer of the sentence, (ii) request that they forthwith inform the victim of the sentence and (iii) where probation is imposed that they provide the victim with a copy of the probation order and the name and number of the probation office; or

(c) as soon as practicable: (i) inform the victim of the sentence and (ii) where probation is imposed, provide the victim a copy of the probation order and the name and number of the probation office.

**** Crown Attorneys should consider the need for conditions that protect the victim and the availability of treatment programs for the offender. Treatment programs available across the province are attached as Appendix "C".***

IV. Appeal Proceedings

1.0 The Crown Attorney handling the appeal should inform the investigating police force or Victims' Services Officer of:

(a) any notice of appeal;

(b) any bail order pending the hearing of the appeal;

(c) the date of the appeal hearing;

(d) the outcome of the appeal; and

request that the investigating police force or Victims' Services Officer notify the complainant/victim of:

(a) any notice of appeal;

(b) any bail order pending the hearing of the appeal;

(c) the date of the appeal hearing;

(d) the outcome of the appeal.

APPROVED BY THE DIRECTOR OF PUBLIC PROSECUTIONS, J.S.T. PITZUL
EFFECTIVE JUNE 7, 1996

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APPENDIX "A"

DIRECTIVE OF THE ATTORNEY GENERAL AND SOLICITOR GENERAL REGARDING SPOUSAL/PARTNER ASSAULT

Violence against women is a major societal concern. Incidents of spousal/partner assault are not to be considered of less importance than other forms of assault. In an effort to raise the level of awareness within the criminal justice system and to ensure that existing criminal laws are fully enforced, the Attorney General and the Solicitor General issue the following directive.

1. The police are to respond to and fully investigate all complaints of spousal/partner assault. The parties are to be interviewed separately. Written and signed statements should be obtained from the victim/complainant and witnesses as soon as is practicable. The alleged assailant is to be arrested if the police officer has reason to believe that there will be a continuation or repetition of the offence or if other grounds for arrest are present. The victim/complainant and the assailant are to be advised of the community resources which are available to provide guidance and assistance.

2. The police officer is to lay a charge where there are reasonable grounds to believe that an offence has been committed, regardless of the wishes of the victim/complainant. Where the police officer lays a charge, the officer is to inform both the victim/complainant and the accused that the victim/complainant cannot withdraw the charge. The withdrawal of charges is the responsibility of the Crown Attorney.

3. Where a victim/complainant appears before a Justice of the Peace for the purpose of commencing a private prosecution, the Justice of the Peace should determine whether the victim/complainant has consulted with the police. If no consultation has occurred, the Justice of the Peace should refer the complainant to the police. However, if the complainant then or later wishes to proceed with a private prosecution, the Justice of the Peace should deal with the matter according to law.

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Nothing in this Directive shall be interpreted as limiting the right of a person to commence a private prosecution.

4. Police are to consult a Crown Attorney at the earliest possible stage with respect to the prosecution of the charge. A police officer is to provide advice regarding the term and conditions of bail or continued custody upon the first appearance of the accused. The Crown Attorney and the police are to facilitate the prompt service of a summons on the accused.

5. The violation of a peace bond is a criminal offence. Where a person bound by a peace bond violates a term of the peace bond, the police are to treat such violation in the same manner as a breach of a term of bail.

6. Charges under section 266(b) of the **Criminal Code**, in relation to an assault between a husband and wife, may be prosecuted in either the Provincial Court or the Family Court. The Crown Attorney is responsible for deciding which court each case should go before on a case by case basis. Crown Attorneys should consider the expedition of the charge as an important consideration when assessing which court should handle the matter. For the purpose of determining Family Court jurisdiction, the definition of husband and wife in the **Family Court Act** includes persons living together as husband and wife for a period of at least one year.

7. The Crown Attorney will make every reasonable effort to obtain an early court date.

8. Crown Attorneys will prosecute a spousal/partner assault charge whenever they are satisfied that sufficient evidence exists regardless of the victim's/complainant's wishes unless public interest considerations dictate otherwise. The request of a victim/complainant to stop a prosecution because the victim/complainant and the accused have reconciles or are in the process of reconciling is not, in itself, sufficient basis upon which to stop a prosecution.

Approved by the Attorney General for the Province of Nova Scotia March 30th, 1992

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APPENDIX "B"

DIRECTIVE OF THE DIRECTOR OF PUBLIC PROSECUTIONS REGARDING THE EXERCISE OF PROSECUTORIAL DISCRETION

After consultation with the Public Prosecution Service Management Council, the following guidelines are issued to the Public Prosecution Service pursuant to Section 4(3) of the Public Prosecutions Act.

A. Statement of Principle

The Supreme Court of Canada has recognized that the principle of prosecutorial discretion is an important and useful part of the criminal law. As representatives of the Crown and agents of the Attorney General, Crown Attorneys have a wide amount of discretion in the carriage of criminal and provincial cases. The decision whether or not to continue a prosecution is one of the most important steps in the prosecution process. In every case great care must be taken in the interest of the community and the accused to ensure that the right decision is made. A wrong decision to continue a prosecution or a wrong decision to terminate a prosecution both tend to undermine the confidence of the community in the justice system.

B. Evidentiary Considerations

Crown Attorneys will be guided by the principle that a prosecution should only go forward where there is evidence available on each essential element of the offence charged and the Crown Attorney believes there is a reasonable chance that a conviction will result if the case proceeds to trial. If the available evidence does not meet this standard, the prosecution shall be terminated.

C. Public Interest Considerations

The principle of prosecutorial discretion also requires that a prosecution only proceed where the public interest is best served by a prosecution. In determining whether the public interest is best served by a prosecution in those cases where there is evidence which could sustain a conviction, the Crown Attorney should take into consideration the following factors:

(i) the triviality of the alleged offence or that it is of a "technical" nature only;

(ii) the age, physical health, mental health or special infirmity of an alleged offender or witness;

(iii) the staleness of the alleged offence;

(iv) the degree of culpability of the alleged offender (particularly in relation to other alleged parties to the offence);

(v) the likely effect of a prosecution on public order and morale;

(vi) the obsolescence or obscurity of the law;

(vii) whether the prosecution would be perceived as counterproductive;

(viii) the availability or efficacy of any alternatives to prosecution in the light of the purposes of the criminal sanction;

(ix) the prevalence of the alleged offence and any related need for deterrence;

(x) whether the consequences of any resulting conviction would be unduly harsh or oppressive;

(xi) any entitlement of the State or other person to compensation, reparation or forfeiture;

(xii) the opinion of the victim of the alleged offence;

(xiii) the likely length and expense of a trial;

(xiv) whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;

(xv) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court; and

(xvi) the necessity for the maintenance of public confidence in legislatures, courts and the administration of justice.

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The factors which are to be excluded from consideration in determining whether the public interest is best served by a prosecution, include:

(i) the alleged offender's race, religion, sex, national origin, political associations, or beliefs;

(ii) the Crown Attorney's personal feelings concerning the victim or the alleged offender;

(iii) any partisan political advantage or disadvantage which might flow from the decision to undertake or stop a prosecution; or

(iv) the possible effect on the personal or professional circumstances of those responsible for the charging decision.

Before terminating a prosecution the Crown Attorney should, where possible, consult with the investigator and the victim of the alleged offence. The final decision as to whether the prosecution will continue or be terminated rests with the Crown Attorney. When a prosecution is terminated, a notation shall be placed on the file indicating the reason why the prosecution is being terminated. In cases where there is evidence which could sustain a conviction but the Crown Attorney is considering terminating the prosecution in the public interest, the Crown Attorney shall consult with the Associate Regional Crown Attorney, Regional Crown Attorney or designate.

Approved by the Public Prosecution Management Council, June 19, 1992

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APPENDIX "C"

Men's Intervention Programs

1. **Amherst**

   New Directions
   P. O. Box 1141
   Amherst, N.S.
   B4H 4L2

   Phone: 667-1344

2. **Halifax**

   New Start
   3115 Veith Street
   Halifax, N.S.
   B3K 3G9

   Phone: 453-4320

3. **New Glasgow**

   New Leaf
   P. O. Box 661
   New Glasgow, N.S.
   B2H 5E2

   Phone: 755-2220

4. **Sydney**

   Second Chance
   54 Prince Street
   Sydney, N.S.
   B1P 5J7

   Phone: 567-0979

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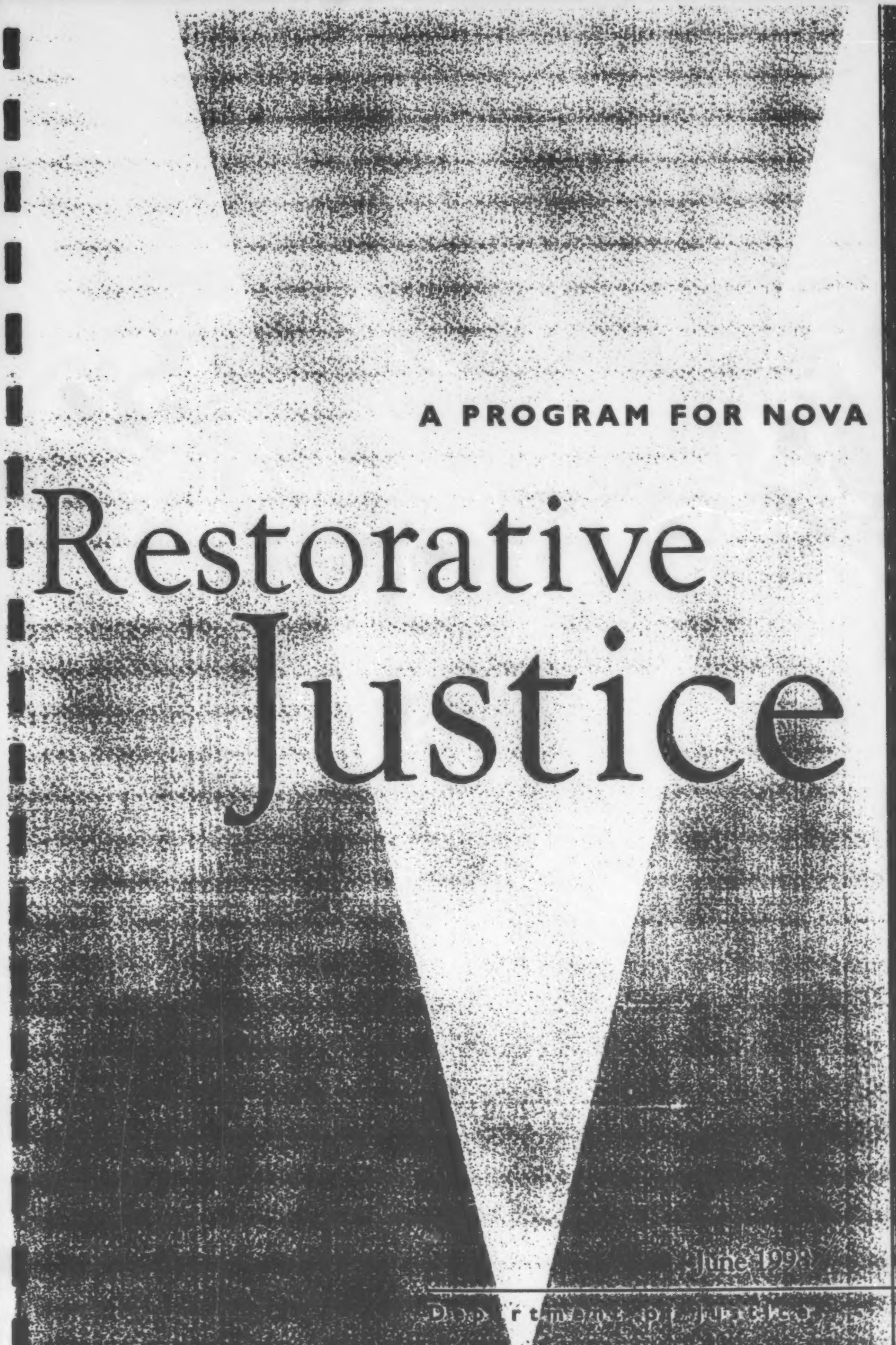

A PROGRAM FOR NOVA

Restorative Justice

June 1998

Department of Justice

A PROGRAM FOR NOVA SCOTIA

Restorative Justice

June 1998

Department of Justice

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NOVA SCOTIA

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Nova Scotia

**Minister of Justice
and Attorney General**

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Bus: 902 424-4044
Bus: 902 424-4020
Fax: 902 424-0510

Our File Number:

I am pleased to introduce this framework for the establishment of a restorative justice program for Nova Scotia.

We are committed to improving our justice system. We want Nova Scotians to feel confident in a system that aspires to put community safety first. To improve communities we need to involve communities, and that is the starting point for restorative justice.

Our goal is to have a justice process that holds offenders accountable in a more meaningful way, repairs the harm caused by the offence, reintegrates the offender, and achieves a sense of healing for the victim and the community.

The vision of many is reflected in this document. Judges, Crown attorneys, defence lawyers, police officers, corrections staff, academics, and representatives from victims' services and community agencies contributed to the creation of this document. Their insights were invaluable in laying the foundation for this Initiative.

I look forward to the implementation of this exciting Initiative and to the development of new partnerships in communities throughout this Province.

Sincerely,

Jim Smith

Dr. Jim Smith, MLA
Minister of Justice

Printed on paper that
contains recycled fibre

In recent years public confidence in the Canadian justice system has been steadily declining.[*] There is a feeling that offenders are not held accountable for their actions, and that victims and communities have no say in the justice system.

In 1994-95 the criminal justice system cost Canadians almost 10 billion dollars.[1] This figure includes the cost of policing, corrections, probation services, legal aid and the courts. A perception exists that the Canadian justice system is soft on crime, but this may be a naive point of view. Our courts incarcerate adult offenders at one of the highest rates of any western country.[2] Moreover, our record for incarcerating youth is even higher when compared with other countries.[3] Another common misconception is that crime rates are rising steeply, when in fact they have been declining in recent years.[4]

So what is the real source of our dissatisfaction? To say that our system is not tough enough may be missing the point. Increasingly, the effectiveness of tougher punitive measures is coming into question. More subtle concerns that have gone largely unaddressed for generations may be at the root of the lack of confidence in our justice system. These concerns include our failure to listen to the real needs of victims and our unwillingness to respond in concrete ways to their needs.

This lack of confidence may also come from the inability of our existing system to more effectively reduce the propensity of offenders to reoffend. Many longstanding observers of the justice system contend that, after great public expense, a large percentage of offenders are exiting our correctional institutions with a more anti-social and potentially more dangerous orientation than when they entered the facilities.

The reason for public dissatisfaction may not even be this specific. It may simply be that too many people live day to day in fear of crime.

Restoring public confidence, reducing recidivism, and increasing public and victim satisfaction will take enormous effort over many years. It will require a rethinking and perhaps a retooling of not only our justice system, but of our educational, health and social services systems. It will require a comprehensive, multi-disciplinary, multi-departmental, and even multi-governmental strategy to prevent crime. It will require smarter, more effective ways of making our communities safer.

The time has come to give our justice system a deeper social justice and social science context.[*] A promising road toward improvement is both old and new. Amidst the ancient traditions (notably aboriginal) of a surprisingly large number of cultures is a way of thinking about conflict and crime that has been captured by the modern phrase "restorative justice".

> "More subtle concerns that have gone largely unaddressed for generations may be at the root of the lack of confidence in our justice system. These concerns include our failure to listen to the real needs of victims and our unwillingness to respond in concrete ways to their needs."

---

[*] A July 1997 Angus Reid poll found that 47% of the public surveyed expressed a lack of confidence in the courts; 54% expressed a lack of confidence in the prison system; 72% in the Young Offenders Act; and 72% in the parole system.

[*] We must, however, be vigilant in avoiding wholesale changes that sacrifice valuable principles of the existing justice system that have developed over many generations. The current system effectively guarantees the protection of individual rights. It recognizes the importance of conducting a fair hearing and making objectively supportable decisions. Most importantly it makes the protection of communities its primary goal.

Restorative Justice: What is it?

Defining restorative justice can be elusive because it is a philosophical framework or a way of thinking about crime and conflict, rather than a distinct model or system of law. It goes beyond how we think about crime and conflict to how we think about ourselves collectively as a society. Furthermore, restorative justice comes in many different forms depending on the traditions and preferences of the communities that adopt restorative alternatives. Components of restorative justice that may exist in one community may not exist in others. There are, however, broad parameters or principles within which almost all restorative justice initiatives fit. The best way of highlighting these principles is by contrasting them with the existing court-driven adversarial system.[5]

Adversarial System	Restorative Justice
• crime is defined as a violation of rules, and a harm to the state	• crime is seen as a harm done to victims and communities
• victim is inhibited from speaking about his/her real losses and needs	• victim is central to the process of defining the harm and how it might be repaired
• offender, victim and community remain passive and have little responsibility for a resolution	• offender, victim and community are active and participate in the resolution resulting from the restorative forum
• community's role is limited	• community is actively involved in holding offenders accountable, supporting victims, and ensuring opportunities for offenders to make amends
• restitution is rare	• restitution is normal
• controlled and operated by the state and professionals who seem remote	• overseen by the state, but usually driven by communities
• offender is blamed, stigmatized and punished	• the long-term protection of the public mandates a focus on the methods of problem solving that include the reintegration of the offender into the community, and the preservation of his/her dignity
• repentance and forgiveness are rarely considered	• repentance and forgiveness are encouraged
• assumes win-loss outcome	• makes possible win-win outcome

"Defining restorative justice can be elusive because it is a philosophical framework or a way of thinking about crime and conflict, rather than a distinct model or system of law. It goes beyond how we think about crime and conflict to how we think about ourselves collectively as a society."

In the current criminal justice system, victims frequently feel frustrated and left out of their own cases, except perhaps for being witnesses. Restorative justice recognizes that victims have many needs. They need an opportunity to speak about their feelings and to have the power restored to them that has been taken away by the experience of the offence; they need recognition of the pain and suffering they have endured; and they also need to understand the offender's motivation for committing a crime. Restorative justice recognizes these needs, and allows for victim involvement in determining how those needs can best be met.

Restorative justice also provides community members with an opportunity to voice their feelings and concerns; show disapproval of the offender's behaviour without branding them an outcast; and be actively involved in a process which holds offenders accountable and repairs the harm caused to the victim and the community.[6]

In the conventional criminal justice system, offenders usually focus on avoiding punishment. The general fixation on punishment as the principal tool for correcting behaviour drives offender responsibility underground. If the only option available for offenders is a potentially harmful period of incarceration, nonacceptance of responsibility will be the standard response. It is socially more valuable to have offenders acknowledge the harm their actions have caused and right their wrong. Restorative justice requires offenders to take responsibility for their conduct, and then take action to repair the harm their offence has caused to the victim and the community.

Restorative programs place a high value on a face-to-face meeting between the victim, offender and community.[*] During the course of that meeting, each party is given an opportunity to tell the story of the crime from their own perspective, and talk about their concerns and feelings. The meeting helps the parties develop an understanding of the crime, of the other parties, and of the steps needed to make amends. The meeting concludes with an agreement outlining how the offender will make reparation. Reparation can include monetary payment, service to the victim, community service or any other outcome agreed upon in the process. Terms of the agreement can be personalized to take into consideration the individual circumstances of the offender.

"The general fixation on punishment as the principal tool for correcting behaviour drives offender responsibility underground. If the only option available for offenders is a potentially harmful period of incarceration, nonacceptance of responsibility will be the standard response."

In the application of restorative justice, it will be necessary to assess each case based on its merits and the circumstances of the victim and the offender.[7] Restorative justice is only available when offenders are prepared to accept responsibility for their actions. Furthermore, for the more serious offences, an offender may still be required to go to jail after participating in a restorative justice forum.

[*] That meeting can take one of many forms, depending on the circumstances of the case, and the point in the system at which the meeting takes place. These could include for example, victim-offender conferences, family group conferences and sentencing circles. See "Restorative Justice Models", *infra* at p.11.

Crime Prevention

Restorative justice goes beyond the detection and conviction of offenders, and focuses on the deterrence of recidivism; reparation of the harm caused to the victim; and integration of the offender back into the community. The impact of a victim's voice on an offender can be compelling. Restorative justice enhances a community's sense of safety by identifying circumstances in the community which contributed to the offence, and determining what can be done to avoid a similar situation in the future.[8] Strengthening the ability of individuals and communities to take greater responsibility; reconnecting people to positive environments; rebuilding a sense of community; and redressing the underlying causes of crime also result from restorative approaches and contribute to crime prevention.[9]

Existing Criminal Justice System

One of the greatest strengths of the current system is that it promotes the carriage of justice in an objective, open and public way. Protection of individual rights, certainty of results, consistency of applications and fairness of treatment are issues that receive primary attention in the current system. Every effort must be made to retain the importance of these principles in any restorative justice initiative, and to strike a balance between increased public participation and the ongoing need for procedural checks and balances.

"The impact of a victim's voice on an offender can be compelling."

The Start of Action in Nova Scotia

Over the past decade the shortcomings of the justice system have led many to consider turning to the idea of restorative justice.* Initiatives with restorative justice principles have been emerging in communities throughout Canada, including Nova Scotia.

The Nova Scotia Department of Justice is committed to improving the delivery of justice. Its leadership in the development of this Restorative Justice Initiative is part of its continuing commitment to meaningful improvements. In the summer of 1997 a multidisciplinary Steering Committee[10] was struck by the Department to develop a systemwide Restorative Justice Initiative for Nova Scotia.

In September 1997 the Steering Committee hosted a one-day symposium on the future of restorative justice in this Province. It was attended by key individuals from all components of the criminal justice system, including the Minister of Justice, key Justice officials, Chief Justices/Judges of each level of court (or his/her representative), the Executive Director of Legal Aid, the Director of Public Prosecutions, chiefs of various key police services, Victims' Services staff, and community representatives. This group enthusiastically endorsed the idea of moving forward with restorative justice ideas.

Goals and Objectives of the Initiative

Primary Goals:

1. Reduce Recidivism

Recidivism rates are too high. It has been shown that face-to-face meetings with victims can have a profound effect on the future behaviour of offenders. The nature of the restorative process provides an opportunity to focus on the underlying causes of the criminal behaviour and the constructive reintegration of the offender into the community.

2. Increase Victim Satisfaction

The victim's voice is rarely heard in the formal justice system. By having a forum in which they can discuss the impact of the offence, and assist in the identification of the reparative measures to be taken, victims will derive greater satisfaction.

Secondary Goals:

1. Strengthen Communities
2. Increase Public Confidence in the Justice System

*** After conducting hearings across Canada on possible reform to the youth justice system, the Report on *Renewing Youth Justice* by the House of Commons Standing Committee on Justice and Legal Affairs (1997) called for a more restorative approach to youth justice. It recommended that the youth justice system be reformed to accommodate alternatives such as police cautioning, family group conferencing and circle sentencing (at p. 55). The Federal Government's response to the Report (May 1998) supported the use of these alternatives to youth court proceedings, stating that they hold great promise as appropriate, effective and efficient responses to youth crime.**

The existing formal justice agencies have assumed primary responsibility for crime prevention and crime control. As a result, communities have become increasingly alienated from the justice system. A restorative approach invites the participation of communities in achieving reconciliation between offenders and those harmed through the commission of an offence. Greater participation by communities and victims, and evidence of a more effective justice process will enhance public confidence.

The Role of Community

Perhaps the strongest recommendation coming out of the September symposium was that the role of Government in this Initiative should be that of facilitator, or overseer. Government should not become the de facto deliverer of restorative justice programs. Individual communities should be empowered to shape these programs and to deliver the service of restorative justice.

Undoubtedly, financial support from Government will be required to implement individual restorative justice programs and to oversee the Initiative. Although Government has a leadership role to play in areas such as establishing a legal framework for the programs, enabling community-based programs, initiating interest, setting standards, and monitoring progress, Government cannot create and run restorative justice programs in every community. The overwhelming consensus is that community ownership is essential to a successful restorative justice program. This does not mean a downloading of Government responsibilities onto communities without resources. The goal is a genuine partnership and collaboration, not Government avoidance of its responsibility with respect to justice services.

Fortunately, in Nova Scotia there are many active volunteer organizations committed to the delivery of service in the justice system. Notable amongst them are the seven alternative measures societies throughout the Province. These organizations provide an alternative to court for young people in trouble with the law for the first time. A recent review of the Alternative Measures Program in Nova Scotia[11] resulted in recommendations which support the development of a more restorative approach to justice:

> *Develop a model of mediation which is specific to alternative measures in Nova Scotia and which is focused on community/victim-offender reconciliation and other principles of restorative justice.*[12]
>
> *Develop a philosophy on victim involvement in the justice process, [and] ensure more effective delivery of victim support services for participation in the alternative measures hearing...*[13]

"Government should not become the de facto deliverer of restorative justice programs...The overwhelming consensus is that community ownership is essential to a successful restorative justice program. This does not mean a downloading of Government responsibilities onto communities without resources. The goal is a genuine partnership and collaboration, not Government avoidance of its responsibility with respect to justice services."

> *Develop more effective concepts and models of community service and victim/offender reconciliation (i.e., personal service to the victim) that will recognize the critical importance of these measures in providing opportunities for restitution and reconciliation.*[14]

Consultation with system stakeholders and the community must continue to be emphasized throughout the Initiative. As a first step, broad consultation with stakeholders in the criminal justice system provided the Department with an opportunity to begin the education process, and encourage input from many different sectors of the system. Similarly, engaging the community in the early stages of the Initiative allowed for the development of a new partnership between the formal justice system and community agencies. Perhaps the most important benefit at this stage of the Initiative is that it allows community agencies to focus on what restorative model would be appropriate for their particular community. Restorative justice will not work if there is a perception that Government officials are deciding what is best for communities.

Four Entry Points to the System

The Steering Committee recognized early on that for a Restorative Justice Initiative to be truly effective, it needed to be flexible enough to meet the specific needs of many different offenders, victims and communities. Despite restorative alternatives being most prevalent at pre-charge and post-charge/pre-conviction entry points, it was recognized that there is nothing to preclude the use of restorative programs at post-conviction and post-sentence entry points as well. The Steering Committee therefore supports a more systemic approach to restorative justice, one which provides for the referral of cases at all entry points in the system.[15] These four entry points can be summarized in the following way:

1. Police Entry Point (pre-charge)
    - referral by police officers
    - referral of Level 1 and Level 2 offences (see "Included and Excluded Offences", *Infra*, at p.16)

2. Crown Entry Point (post-charge/pre-conviction)
    - referral by Crown attorneys
    - referral of Level 1 and Level 2 offences

3. Court Entry Point (post-conviction/pre-sentence)
    - referral by Judges
    - referral of Level 1, Level 2 and Level 3 offences

4. Corrections Entry Point (post-sentence)
    - referral by Correctional Services/Victims' Services staff
    - referral of Level 1, Level 2, Level 3 and Level 4 offences

Continuum of Options

These four entry points make possible a continuum of options. The important notion to keep in mind is that for more serious cases, the matters would pass to an entry point that is more formal and which is subject to greater public scrutiny. For example, serious robbery charges would not be referred to restorative justice at the police (pre-charge) entry point.

The referring body (police, Crown attorney, judge, Correctional Services/Victims' Services staff) will conduct an assessment of the case using the overall guidelines for program participation.[16] If a referral is made, an assessment will then be conducted to determine which restorative model is appropriate for that case.[17]

"Despite restorative alternatives being most prevalent at pre-charge and post-charge/pre-conviction entry points, it was recognized that there is nothing to preclude the use of restorative programs at post-conviction and post-sentence entry points as well"

Understanding the directions a case may take can perhaps be best understood with reference to the diagram at Appendix D.[18] Beginning with the first entry point, the police have a variety of options. They may choose to provide an informal warning or a formal caution to the offender for the least serious offences. The next option would be to refer the matter directly to alternative measures or to a restorative justice process. All of this would happen without the laying of a charge. If a police officer lays a charge, he/she may still believe a restorative option is preferable, and may therefore recommend such an option to the Crown attorney.

After a charge has been laid, a Crown attorney, upon reviewing the guidelines, may also refer a case to a community agency for assessment, or proceed with prosecution of the case.

For the most serious cases, a conviction may need to be entered in formal court. The judge, on his/her own motion, or on the recommendation of the Crown attorney or defence counsel, may make a referral to a community agency. The matter would be adjourned to provide the agency an opportunity to perform an assessment, and for a restorative justice forum, such as a sentencing circle, to be held. The judge may also decide to adjourn sentencing until the offender has had time to complete the terms set forth in the agreement arising out of the forum.

The use of restorative options is also possible after an offender has been sentenced. A restorative option at this point in the system could be used as a tool to achieve healing for the victim, offender and community during the time the sentence is being served, or to assist in the reintegration of the offender into the community after the sentence has been served. Cases at this entry point would be referred by Correctional Services/Victims' Services staff to a community agency for assessment.

Informal Warnings and Formal Cautions

Dealing appropriately with "low end" offences and first time offenders continues to be a priority under the Restorative Justice Initiative. Police officers have always exercised their discretion in the form of informal warnings. Warnings are an effective way of diverting less serious offenders quickly and simply.

For an officer to give a warning, there must be enough evidence to lay a charge, and the offender must accept responsibility for his actions. Informal warnings typically are delivered by the investigating officer, as soon as possible after the incident has occurred. In the case of young offenders, the officer may also contact the youth's parent/guardian in person or by telephone.

The next step is the formal caution. The notion of a formal cautioning program was discussed not only with the police subcommittee, but also with a focus group of police officers who assisted in the development of a protocol. The consensus was that a formal caution would be appropriate for less serious offences, or perhaps for minor repeat offenders. Appropriate cases would be provincial statute offences; minor property offences; disorderly conduct offences; assaults not resulting in bodily harm; and mischief.

Experience in the use of cautions has demonstrated that it has a major impact in decreasing the number of cases proceeding through the formal justice system.*

> *A study conducted in 1993 [in England] found that of those between the ages of 10 and 16 who had either been cautioned or convicted, 90% of males under 14 were cautioned; 97% of females under 14 were cautioned; 69% of males aged 14 to 16 were cautioned; and 87% of females aged 14 to 16 were cautioned.*[19]

The decision to caution is made by the police in accordance with established procedures. A formal caution can be administered if there is enough evidence to lay a charge, the offender accepts responsibility for the offence, and the offender gives informed consent to being formally cautioned.

A caution is recorded by a letter mailed to the offender from the supervising officer. Depending on the circumstances of the case, a caution may also require the offender to attend at the police station for a more formal administration of the caution by a supervising officer, or to attend an educational program specific to the offence committed. The victim will be informed of the decision to caution, and be given an opportunity to express their feelings about the use of a caution. Lack of agreement by the victim however, does not preclude the use of a caution. During the actual caution the officer will explain the consequences of the caution, the seriousness of the situation, and the impact the offender's behaviour has had on the victim and the community.

Youth and Adult Diversion Programs

Police and Crown attorneys already have the option of referring offenders to diversion programs in Nova Scotia. A post-charge Adult Diversion Program currently exists pursuant to s. 717 of the *Criminal Code*. If the offender meets the eligibility criteria set out in that section, and the offender and the offence meet the criteria set out in the provincial guidelines, the Crown attorney may, usually in consultation with the investigating officer, refer the offender to the Adult Diversion Program. The Program is administered by probation officers, who, in interviewing the offender, reach a formal adult diversion agreement.

For youth, a pre-charge/post-charge Diversion Program exists under the rubric of Alternative Measures, pursuant to s. 4 of the *Young Offenders Act*. Youth are referred by

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*** The Report on *Renewing Youth Justice* by the House of Commons Standing Committee on Justice and Legal Affairs referenced research findings which demonstrated that police cautioning was an effective alternative to formal charging and prosecution (at p. 46).**

police officers and Crown attorneys to a community-based alternative measures society which conducts a mediation session run by volunteers. The mediation session is held with the offender, his/her parents, two volunteer mediators, a police officer and in some cases, the victim, and his/her support people. As is the case with the Adult Diversion Program, the provincial policy guidelines exclude certain types of offences, and offenders who have participated in the Program in the past two years.

Restorative Justice Models

A restorative option can take one of many forms, depending on the circumstances of the case, and the point in the system in which the restorative option is invoked. In general, the models all focus on offender accountability, victim healing, offender reintegration and repairing the harm caused by the offence. The actual model used may be different for different communities, since community agencies will modify the generic models to meet the unique complexities of the community in which they serve.

Victim-Offender Conference

The victim-offender conference is a forum which provides an opportunity for victims and offenders to meet face-to-face in the presence of a trained facilitator. "The parties have an opportunity to talk about the crime, to express their feelings and concerns, to get answers to their questions, and to negotiate a resolution."[20]

Family Group Conference

A family group conference is a model similar to a victim-offender conference in that it involves a face-to-face meeting between the victim and offender. A family group conference however, engages a larger group of participants which includes the support people for both the victim and the offender, relevant professionals, the facilitator, and the investigating officer.

> *The family group conferencing model is a clearly restorative justice based intervention with many very similar outcomes as victim-offender mediation, but with the added benefit of having all those affected by the crime present with the potential for greater community support for both the victim and offender. It is based upon the concept of "reintegrative shaming" developed by Australian criminologist John Braithwaite (1989). This concept focuses on the importance of denouncing or shaming the criminal behaviour while affirming, supporting and helping to reintegrate the offender back into the community.*[21]

"In general, restorative justice models all focus on offender accountability, victim healing, offender reintegration and repairing the harm caused by the offence."

Sentencing Circle

In addition to the models described above, another model is available at the court entry point: the sentencing circle. The circle involves the same participants as a family group conference, as well as the presiding judge, Crown attorney, and defence counsel. As with the other models, each participant is given an equal opportunity to participate, and to work together to arrive at a plan for the offender which will not only repair the harm caused by the offence, but also address the personal reasons which led to the commission of the offence. The circle goes beyond developing a sentence for the offender, and engages the support of all participants to assist the offender in fulfilling the terms of the plan.

Guidelines for the Framework

The Youth and Adult Diversion Programs have provided a useful alternative to the formal justice system, and have laid a solid foundation for the development of a Restorative Justice Program. However, these programs are not truly restorative in that they do not involve the victim and community on a consistent basis.

Out of the work of the four subcommittees (see endnote 15) emerged a strong consensus that the existing provincial guidelines for these Programs were too restrictive in that they exclude for example, more serious offences, and offenders with any criminal histories. Similarly, in the Alternative Measures Review,[22] a number of recommendations called for the involvement of a broader range of youth involved in a broader range of offences. This could only be done if it is consistent with protecting society from criminal behaviour. The recommendations are as follows:

> *The eligibility criteria dealing with multiple offences, personal injury or indictable offences should be eliminated and discretion employed by the Crown, based on the specific circumstances of the offence and the characteristics of the offender to be determinative of suitability for referral.*[23]
>
> *Eliminate the "once only in two year" policy*[24] *and allow the circumstances of the offence and the characteristics of the offender to be determinative in subsequent referral decisions. This process should incorporate the categories of offences as outlined in the earlier recommendation on presumptive referrals. It should also be accompanied by a clear procedure involving increasingly substantive measures for subsequent offences in a clearly defined boundary of behaviour beyond which the youth will revert to the conventional court process.*[25]

By targeting only low-end offences, the subcommittees generally felt that three problems appeared. First, for common offences such as shoplifting, victim participation would continue to be low.[26]

Second, the experience of restorative justice often seems to be more meaningful for offenders, victims, and communities when it involves more serious offences and the loss to the victim is more profound.

Third, by targeting only offenders with little or no criminal history, we are eliminating the possibility of using restorative justice as a crime prevention strategy for reducing recidivism amongst offenders about whom the public is most concerned.

At the same time, the public and criminal justice workers properly expect a level of predictability and certainty in guidelines and results. Acquiring and keeping public confidence is essential to the long-term viability of restorative justice. This will build over time. Protection of the public remains the primary goal of the criminal justice system, and this Initiative must remain consistent with this goal. The selection of cases for referral must be carefully handled or the Initiative risks criticism that could irrevocably damage its reputation. Since the philosophy of restorative justice is new to most people, winning credibility and the confidence of the community must remain a top priority. This will only happen if the public knows that the risk of failure in each case referred to restorative justice is no greater than it would have been in the conventional system.

The public will have greater confidence in a system that has a reasonably high level of predictable outcomes. Concerns may be raised, perhaps legitimately, that without guidelines, the use of discretion may vary too much from one end of the Province to the other. Furthermore, police officers, Crown attorneys, judges, defence lawyers, and community agencies who are involved in the system will be more likely to embrace the Initiative if the guidelines and the mechanisms that begin the process seem accessible and understandable.

"The experience of restorative justice often seems to be more meaningful for offenders, victims, and communities when it involves more serious offences and the loss to the victim is more profound."

"Protection of the public remains the primary goal of the criminal justice system, and this Initiative must remain consistent with this goal. Securing the confidence of the community must remain a top priority. This will only happen if the public knows that the risk of failure in each case referred to restorative justice is no greater than it would have been in the conventional system."

Minimum Requirements

Minimum requirements[27] for any referral to the Restorative Justice Initiative are:

1. the referral is not inconsistent with the protection of society;
2. the referral is considered appropriate having regard to the interests of the victim, the offender, and the community;
3. the offender accepts responsibility for his actions;
4. the offender has been informed of, and consents freely and fully, to participation in the program;
5. the offender is advised of his right to counsel without delay and is given a reasonable opportunity to retain and instruct counsel;
6. there is sufficient evidence to proceed; and
7. prosecution of the offence is not barred by law.

Failure to meet these minimum requirements will result in the case being dealt with in the conventional justice system.

Discretionary Factors

Discretionary factors to be considered by the referring body before any referral is made are:

1. the cooperation of the offender;
2. the willingness of the victim to participate in the process;*
3. the desire and need on the part of the community to achieve a restorative result;
4. the motive behind the commission of the offence;
5. the seriousness of the offence and the level of participation of the offender in the offence, including the level of planning and deliberation prior to the offence;
6. the relationship of the victim and offender prior to the incident, and the possible continued relationship between them in the future;
7. the offender's apparent ability to learn from a restorative experience, and follow through with an agreement;
8. the potential for an agreement that would be meaningful to the victim (i.e., restitution, actual repairs);
9. the harm done to the victim;
10. whether the offender has been referred to a similar program in recent years;
11. whether any government or prosecutorial policy conflicts with a restorative justice referral; and
12. such other reasonable factors about the offence, offender, victim, and community which may be deemed to be exceptional and worthy of consideration.

* It was recognized that voluntary participation of the victim in a restorative forum is one of the most important goals of the Initiative. It was not believed however that the victim should have a veto per se as to whether a case should be referred to a restorative justice program. In some cases it may be decided that a restorative forum is warranted despite the victim's refusal to participate. In such cases, it is incumbent upon the community agency which facilitates the meeting, to explain to the victim why it is warranted in the case despite their refusal to participate. It should be noted that participation by the victim may take one of many forms, including the use of surrogate victims.

Other Considerations

If, at any point during a restorative forum, the offender or the community agency feels that the forum should not continue, the process may be terminated by that party, and the offender may be returned to the formal justice system.[28]

Compliance with the agreement will be monitored by the community agency to which the case is referred. Upon noncompliance, the offender may be referred back to the formal court system.[29]

No admission, confession or statement by the offender made in the course of restorative justice discussions will be admissible in evidence against that person in later proceedings.

Range of Possible Outcomes

The range of possible outcomes resulting from a restorative forum is broad. They may include for example: community service work; restitution; personal service to the victim; specialized education programs, such as life skills; referral for counselling/treatment; letter of apology; essay; or any other outcome agreed upon in the process.

Included and Excluded Offences

Restorative justice will not be made available for all offences at all of the four entry points. A debate about whether restorative justice is appropriate for spousal/partner violence offences and sexual offences is ongoing in many parts of Canada. The main concern of those who oppose the inclusion of these offences relates to a possible power imbalance between the victim and offender in a restorative forum. Until the Province takes a formal position regarding the possible benefit of restorative justice in spousal/partner violence situations, offences of this nature will only be considered at the court (post-conviction/pre-sentence) and corrections (post-sentence) entry points.

Included and Excluded Offences

LEVEL 1 OFFENCES

These are the only offences for which a formal caution is an option.

- Provincial Statute offences
- Minor property offences
- Disorderly conduct offences (i.e. loitering, vagrancy)
- Assaults not resulting in bodily harm
- Mischief

LEVEL 2 OFFENCES

These offences can be referred at all four entry points.

- This is the largest group of offences. They constitute all *Criminal Code* offences that are not Level 3 or Level 4 offences.

LEVEL 3 OFFENCES

These offences can be referred only at the court (post-conviction/pre-sentence) and corrections (post-sentence) entry points.

- Fraud and theft-related offences over $20,000
- Robbery
- Sexual offences (proceeded with as a summary offence)
- Aggravated assault
- Kidnapping, abduction and confinement
- Criminal negligence/dangerous driving causing death
- Manslaughter
- Spousal/Partner violence offences
- Impaired driving and related offences

LEVEL 4 OFFENCES

These offences can be referred only at the corrections (post-sentence) entry point.

- Sexual offences (indictment)
- Murder

Service Delivery Options

Community Agencies

At all four entry points, the referring body (police, Crown attorney, judge, Correctional Services/Victims' Services staff) has the option of referring a case to a community agency.[30] Upon referral, agency staff will contact all the parties involved in the case, including the offender, their support people, the victim, and their support people. The staff person will work with the victim and offender to provide the support they need to participate in the restorative forum. Information about the available options will be provided to the parties, and an assessment will be made as to which model is most appropriate to meet their needs. The agency will organize the meeting, prepare all participants, and facilitate the meeting. Agency staff will follow up with the offender and victim, and may refer the offender back to the conventional system if he/she does not comply with the agreement arising out of the restorative forum.

Nova Scotia is presently served by seven alternative measures societies. These societies have an impressive base of volunteers, and have credibility in their respective communities. They have provided a strong voice of leadership in community justice issues in the past, and have expressed an interest in handling more serious offences, and in working more with victims. These agencies have also worked in partnership with the Department of Justice for many years, and are therefore well suited to deliver service in this Initiative.

In some geographic areas, it may be appropriate to utilize other community agencies, or to encourage and support the community in the development of a community justice committee.[31]

Police Services

Restorative justice has been identified as a national and provincial priority of the RCMP. RCMP officers and community representatives in each detachment area across the Province have been trained to facilitate a family group conferencing model known as a community justice forum. The investigating officer has the option of referring a matter pre-charge to one of the trained facilitators in a given detachment area. The facilitator will contact all the parties involved in the case, prepare them for their participation in the community justice forum, and facilitate the forum. The officer or a community representative from the forum will follow-up with the offender and the victim. The officer may refer the offender back to the conventional system if he does not comply with the agreement arising out of the community justice forum.

> **"Restorative justice has been identified as a national and provincial priority of the RCMP. RCMP officers and community representatives in each detachment area across the Province have been trained to facilitate a family group conferencing model known as a community justice forum. The investigating officer has the option of referring a matter pre-charge to one of the trained facilitators in a given detachment area."**

In the early development of this Initiative, the Department of Justice established a timely collaboration with the RCMP. A full-time provincial Restorative Justice Coordinator has been appointed for the RCMP, and is working closely with the Department's Restorative Justice Coordinator and the Steering Committee.

Municipal police services in Nova Scotia have also shown an interest in participating in the Restorative Justice Initiative. It is expected that most of their participation will occur in their capacity as a referring body to the community agencies. If however, some services in some municipalities choose to take on the responsibility of delivering the Program, this may be done in consultation with the Department of Justice.

Phase I

The long-term goal of the Initiative is to provide an opportunity for all offenders province-wide to participate in a restorative justice process. Implementation of the Initiative will be multi-phased. Phase 1 will target youth between the ages of 12 and 17 in the Halifax Regional Municipality, the Cape Breton Regional Municipality, and the more rural areas of the Annapolis Valley and Cumberland County.[32]

There were many reasons for addressing youth only in Phase 1 of the Initiative. The public is demanding that the justice system respond more effectively to the problems of youth crime. Diversion from the conventional system will provide a means for connecting youth to the interventions they need, and provide them with an opportunity to take responsibility for, and to participate in, decision making which will have a significant impact on their lives.[33] Further, the alternative measures societies are currently dealing with youth, and therefore have the expertise to deal with this clientele.

In addition to the existence of these societies in the communities chosen for Phase 1,[34] the choice also ensures an urban/rural split, and that Cape Breton is included in the Initiative. Cape Breton is also home to the Mi'kmaq Young Offender Project, an established program which operates healing circles for aboriginal youth.

It is recognized that the current resources allocated to the alternative measures societies would not permit them to adequately provide service in the manner proposed in this Initiative. Enhancing the resources of these societies and increasing the use of formal cautions is expected to alleviate this problem, and facilitate the implementation of restorative justice in the Phase 1 areas.

Working Groups, comprising key stakeholders from the respective communities, (such as police officers, Crown attorneys, defence lawyers, judges, Correctional Services staff, community agencies' staff, and Victims' Services staff) will assist in the implementation of Phase 1.[35]

Education/Training/Communication

Those who work in the criminal justice system - police, Crown attorneys, defence lawyers, judges, Correctional Services staff, Victims' Services staff - have been acclimatized to the conventional system. A process of education is necessary to introduce these workers to the concepts of restorative justice, and to orient them to working more with, and within, communities. Without adequate education of the justice system stakeholders, and training of the community agencies, the endorsement necessary for the viability of restorative justice in this Province will not exist.

"Working Groups, comprising key stakeholders from the respective communities, will assist in the Initiative."

One of the first steps in educating the stakeholders will be a one-day symposium in each of the Phase 1 communities. The day will provide the participants with an oppor-

"A process of education is necessary to introduce justice workers to the concepts of restorative justice, and to orient them to working more with, and within, communities."

tunity to learn about the concepts of restorative justice and the plans for this Initiative. These symposiums will be followed by small group discussions with stakeholder groups to discuss issues specific to their community.

In addition to the education and training of stakeholders, bringing the message of restorative justice to the general public will form part of a comprehensive communication plan.

Evaluation

An effective monitoring and evaluation system must be established to measure the success of the Initiative in achieving its goals. Outcomes to be monitored will include measures of recidivism, victim satisfaction and cost-effectiveness. It will also be essential to consider the secondary impacts of restorative approaches - strengthening the ability of individuals and communities to take greater responsibility; reconnecting people to positive environments; rebuilding a sense of community; and redressing the underlying causes of crime - all of which will contribute to crime prevention.[36]

Ongoing assessment of implementation issues will provide the necessary feedback to permit the Initiative to respond to operational concerns which may be identified during program initiation. Any unintended negative impacts (i.e. exclusion of any identifiable group from program participation) will be determined and remedial action taken.

Experience of other jurisdictions has shown that implementation of restorative justice programs can reduce the costs of processing criminal cases.* An important evaluation component of the Initiative will involve an assessment of whether restorative justice programs lead to direct and indirect financial savings. The financial cost of delivering the existing system is rising yearly. An evaluation of the broader financial issues associated with restorative justice is essential for the continued growth of the Initiative.

Indirect savings will also result from restorative justice programs if the primary goal of reducing recidivism is achieved. The savings will be enjoyed generally by a population of potential victims who are not victimized, and the insurance companies that represent them.

As Government and community agencies expand their participation in restorative justice initiatives, these experiences will generate information which can be used to enhance program effectiveness. Given that Nova Scotia has adopted a unique, system-wide restorative approach, our contribution to the knowledge base will be of particular value to other jurisdictions. It is therefore important to establish a rigorous evaluation process.

*** The restorative justice program in New Zealand reduced the Youth Court caseload from 10,000-13,000 cases per year before the program was introduced in 1989, to 2,587 cases in 1990. Committals of young people to correctional institutions was reduced by 50% following the introduction of the program.**

Time Frame

Immediate tasks will involve educating stakeholders; training community agencies; developing communication and evaluation plans; and supporting the efforts of the working groups in developing the Initiative in their respective communities. Service delivery for Phase 1 is anticipated to begin in early 1999.

The Department of Justice takes the problem of crime seriously. It is believed that holding offenders accountable, and giving victims and communities a voice in the response to crime, will result in a decrease in recidivism rates, and an increase in victim satisfaction. The community-based nature of restorative justice will not only strengthen the structure of communities, but it will also enhance the sense of safety felt by those living in the community.

Restorative justice offers exciting potential for justice agencies and communities to work together in partnership to address the concerns we have all expressed regarding the criminal justice system. It is believed that the success of this partnership depends upon a system-wide approach, one which makes possible a wide range of alternatives, at all entry points in the system.

Understandings of Justice[37]

Retributive Lens	Restorative Lens
Crime is an act against the state, a violation of law, an abstract idea	Crime is an act against another person and the community
Blame-fixing central; emphasizes differences	Problem-solving central; searches for commonalities
Response focused on offender's past behaviour	Response focused on harmful consequences of offender's behaviour; emphasis on future
Emphasis on adversarial relationship	Emphasis on dialogue and reconciliation
Imposition of pain to punish and deter/prevent	Restitution as a means of restoring both parties; goal of reconciliation/restoration
Crime is an individual act with individual responsibility	Crime has both individual and social dimensions of responsibility
State monopolizes the response to wrongdoing	Victim, offender, and community roles recognized
Victim is peripheral to the process	Victim is central to the process of resolving a crime
Victim's "truth" secondary	Victim given chance to "tell his/her truth"
Victim's suffering is ignored	Victim's suffering is lamented and acknowledged
Action from state to offender; offender passive	Offender given a role in the solution
Offender has no responsibility for resolution	Offender has responsibility in the resolution
Outcomes encourage offender irresponsibility	Encourages offender to accept responsibility
Rituals of personal denunciation and exclusion	Rituals of lament and reordering
Offender is denounced; offender is defined by deficits	Harmful act denounced; offender is defined by capacity to make reparation

Retributive Lens	Restorative Lens
Offender's ties to the community weakened	Offender's integration into the community increased
Offender seen in fragments, offence being definitional	Offender viewed holistically
Sense of balance through retribution	Sense of balance through restitution
Balance righted by lowering offender	Balance righted by raising both victim and offender
Justice tested by intent and process	Justice tested by its "fruits"
Victim-offender relationships ignored	Victim-offender relationship central
Process alienates	Process aims at reconciliation
Response based on offender's past behaviour	Response based on consequences of offender's behaviour
Repentance and forgiveness discouraged	Repentance and forgiveness encouraged
Dependence upon proxy professionals	Direct involvement by participants
Competitive, individualistic values encouraged	Mutuality and cooperation encouraged
The offence is defined in technical and legal terms	The offender is understood in full context: moral, social, economic, political
Assumes win-lose outcomes	Makes possible win-win outcomes
Restitution rare	Restitution normal
Offender accountability defined as taking punishment	Accountability defined as assuming responsibility and taking action to repair harm
The "debt" is owed to society	Debt is owed to the victim and the community

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Danny Graham, Chair (Defence Bar)
Gordon Gillis (Deputy Minister of Justice)
Kit Waters (Director, Policy, Planning & Research)
Judy Fowler (Restorative Justice Coordinator)
Fred Honsberger (Executive Directive, Correctional Services)
Gary Dupuis (Director, Community Corrections)
Michele McKinnon (Director, Communications)
Dennis Kelly (Director, Operations, Policing Services)
Joanne Marriott-Thorne (Director, Victims' Services)
Chief Superintendent Steve Duncan (RCMP)
Constable Pat MacNeil (RCMP Restorative Justice Coordinator)
Mona Lynch (Nova Scotia Legal Aid)
Martin Herschorn (Acting Director, Public Prosecution Service)
Bruce Archibald (Dalhousie University Law School)
Andy Montgomery (Alternative Measures Review)
Gordon Michael (Director, Community Collaboration & Partnerships, Halifax Regional Municipality)
Pat Gorham (Director, Island Alternative Measures Society)
Lisa Cole (Coordinator, Cumberland Community Alternatives Society)
Yvonne Hanson (Executive Director, Youth Alternative Society)
Viola Robinson (Board of Commissioners, Mi'kmaq Justice Institute)

Subcommittee Members

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Sergeant John Keylor (Halifax Regional Police Service)
Jerry Pitzul (Director, Public Prosecution Service)
Jane Mills (Crown Attorney)
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Maureen Amos (Regional Manager, Victims' Services)
Judy Fowler (Restorative Justice Coordinator)
Constable Richard McDonald (Halifax Regional Police Service)
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Crown Entry Point

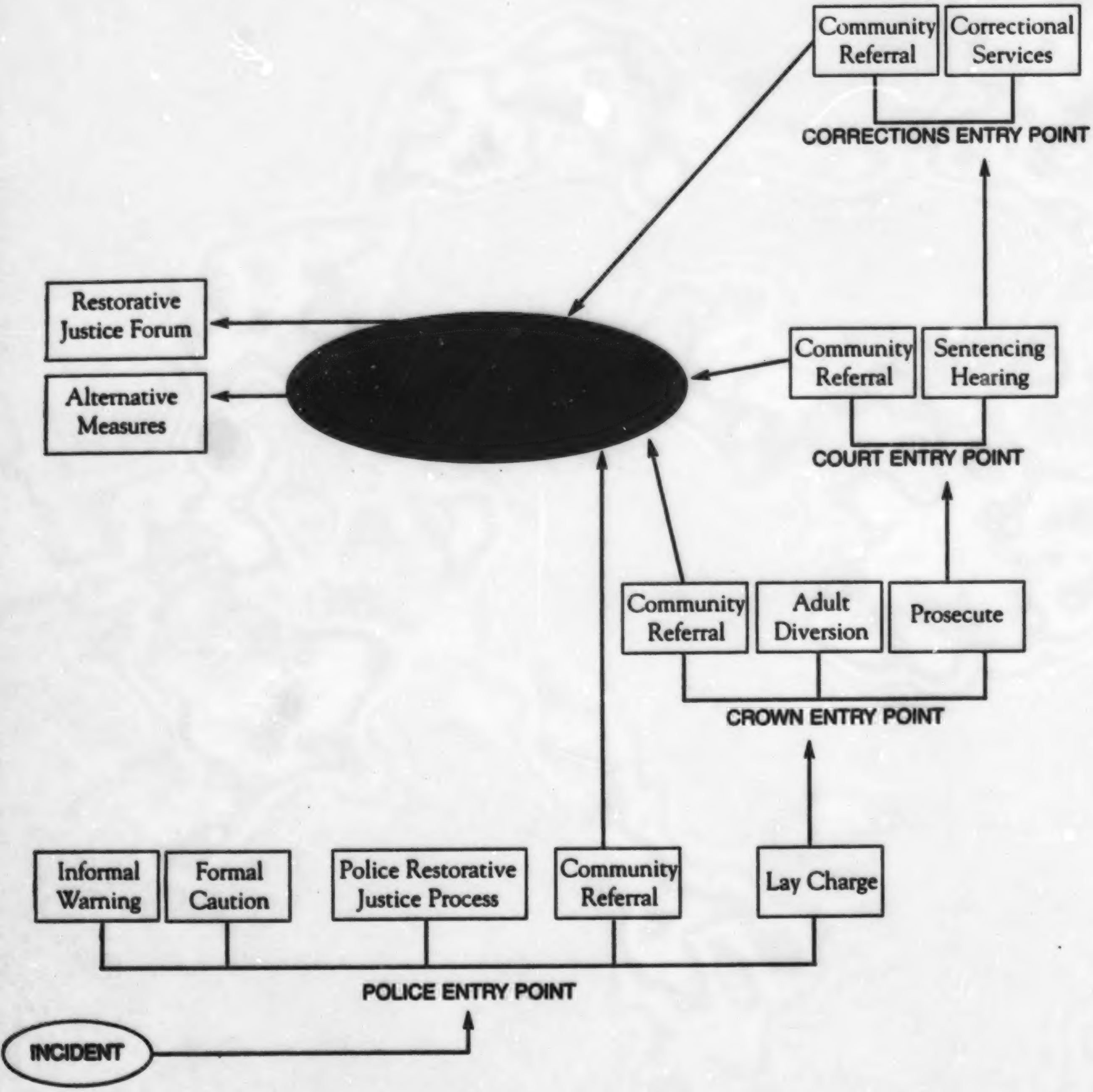
Bruce Archibald, Chair
Jerry Pitzul
Jane Mills
Darrell Carmichael
Judge Barbara Beach (Provincial Court)
Mona Lynch
Judy Fowler
Danny Graham
Gary Dupuis (Director, Community Corrections)
Joanne Marriott-Thorne (Director, Victims' Services)
Chief Superintendent Steve Duncan
Constable Pat MacNeil
Janis Aitken (Senior Probation Officer)
Yvonne Manzer (Executive Director, Youth Alternative Society)
Dennis Kelly

Court Entry Point

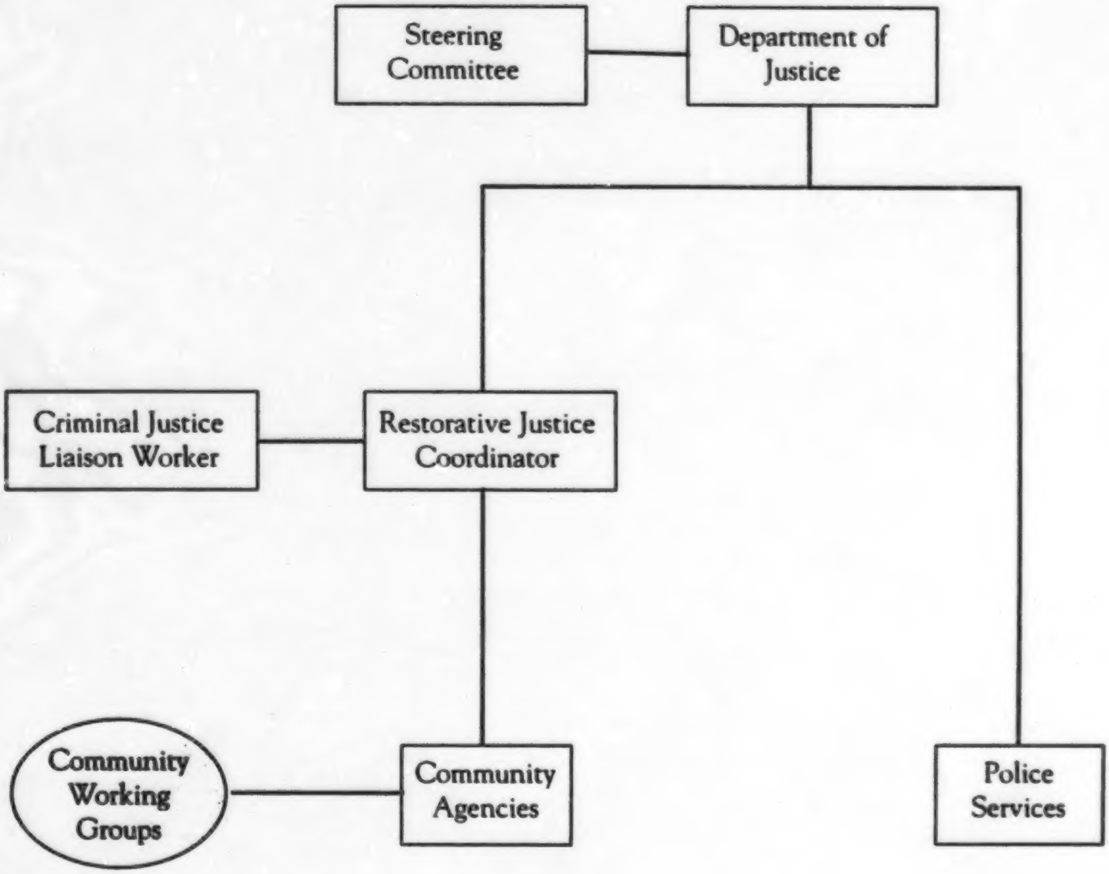
Danny Graham, Chair
Associate Chief Justice Joseph Kennedy (Nova Scotia Supreme Court)
Justice Thomas Cromwell (Nova Scotia Court of Appeal)
Chief Judge Jean-Louis Batiot (Provincial Court)
Chief Judge Robert Ferguson (Family Court)
Judge Anne Crawford (Provincial Court)
Judge John MacDougall (Provincial Court)
Jerry Pitzul
Don Clairmont
Gary Dupuis
Kit Waters
Paula Marshall (Director, Mi'kmaq Young Offender Project)
Al Pottier (Regional Administrator, Corrections)
Joanne Marriott-Thorne
Judy Fowler
Stan MacDonald (Defence Bar)

Corrections Entry Point

Fred Honsberger, Chair (Executive Director, Correctional Services)
Gary Dupuis
Geri Downey (Correctional Service Canada)
Lee Cohen (Defence Bar)
Kit Waters
Maureen Amos
Lori Ehler (Elizabeth Fry Society)
Phil MacNeil (Nova Scotia Legal Aid)
Paul Gallagher (John Howard Society)
Judy Fowler


Community Referral
Correctional Services
CORRECTIONS ENTRY POINT
Restorative Justice Forum
Alternative Measures
Community Referral
Sentencing Hearing
COURT ENTRY POINT
Community Referral
Adult Diversion
Prosecute
CROWN ENTRY POINT
Informal Warning
Formal Caution
Police Restorative Justice Process
Community Referral
Lay Charge
POLICE ENTRY POINT
INCIDENT

STRUCTURE OF RESTORATIVE JUSTICE INITIATIVE


Steering Committee
Department of Justice
Criminal Justice Liaison Worker
Restorative Justice Coordinator
Community Working Groups
Community Agencies
Police Services

1 Canadian Centre for Justice Statistics, *Justice Spending in Canada*, vol. 17, no. 3, 1994-1995.

2 *Satisfying Justice* (Church Council on Justice and Corrections: 1997) at p. II.

3 *Satisfying Justice*, at p. I.

4 Canadian Centre for Justice Statistics, 1997.

5 For a more complete list of the contrasting views of justice, refer to Appendix A.

6 *Satisfying Justice*, at p. XIX.

7 See "Guidelines for the Framework", *Infra*, at p. 12.

8 Stuart, B., *Building Community Justice Partnerships: Community Peacemaking Circles* (Department of Justice Canada: 1997).

9 *Building Community Justice Partnerships*, at p. 13.

10 For a list of the Steering Committee members, see Appendix B.

11 Montgomery, A., *Alternative Measures in Nova Scotia: A Comprehensive Review* (Nova Scotia Department of Justice: August 1997).

12 *Alternative Measures in Nova Scotia*, at p. 68.

13 *Alternative Measures in Nova Scotia*, at p. 68.

14 *Alternative Measures in Nova Scotia*, at p. 87.

15 In assessing the viability of access to restorative justice programs at these entry points, the Steering Committee identified the need to broaden its base of expertise in examining eligibility criteria, guidelines and models. To this end, four subcommittees were formed, corresponding to the four possible entry points in the justice system. For a list of the subcommittee members see Appendix C.

16 See "Guidelines for the Framework", *Infra*, at p. 12.

17 See "Service Delivery Options", *Infra*, at p. 17.

18 Appendix D reflects a process which may be modified from community to community.

19 Hornick, J.P. et al., A *Reference Manual on Crime Prevention and Diversion with Youth*, (Solicitor General of Canada: 1996), at p. 52, citing unpublished Home Office statistics.

20 *Satisfying Justice*, at p. 39.

21 Umbreit, M., *Information on Research Findings Related to Uniquely Restorative Justice Interventions*, (Center for Restorative Justice & Mediation, University of Minnesota: 1996), at p. 14.

22 *Alternative Measures in Nova Scotia*.

23 *Alternative Measures in Nova Scotia*, at p. 45.

24 The current provincial guidelines exclude those youth who have any prior *Criminal Code* or Federal Statute conviction, or have participated in the Alternative Measures Program within the past two years.

25 *Alternative Measures in Nova Scotia*, at p. 58.

26 Again, this is echoed in *Alternative Measures in Nova Scotia*, at p. 59.

27 These requirements are consistent with s. 4(1) of the *Young Offenders Act* and s.717(1) of the *Criminal Code*.

28 There may be situations where it may be appropriate for the offender to be returned to another restorative justice forum.

29 *Ibid*.

30 Appendix D reflects a process that may be modified from community to community.

31 A community justice committee is composed of representatives from the sectors within a community. These committees can assist in criminal and non-criminal matters, and be involved in crime prevention efforts. (*Building Community Justice Partnerships*, at p. 40).

32 RCMP community justice forums will be offered to youth and adults in all areas of the Province served by the RCMP as part of Phase 1 of the Initiative.

33 *Building Community Justice Partnerships*, at p. 130.

34 Youth Alternative Society (serving Halifax Regional Municipality); Island Alternative Measures Society (serving Cape Breton Regional Municipality); Valley Youth Alternatives (serving the Annapolis Valley); and Cumberland Community Alternatives Society (serving Cumberland County).

35 An overview of the structure of the Initiative is provided in Appendix E.

36 *Building Community Justice Partnerships*, at p. 13.

37 Adapted from: Zehr, H., *Changing Lenses: A New Focus for Crime and Justice* (Waterloo: Herald Press, 1990).